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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~1036.~~ 634

THE BANK OF THE OLD DOMINION, PLAINTIFF IN ERROR,

vs.

JAMES H. McVEIGH AND WILLIAM N. McVEIGH.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

FILED JANUARY 11, 1878.

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1 To the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States:

Your petitioner, the Bank of the Old Dominion, a corporation duly incorporated by the general assembly of Virginia, respectfully shows unto your honor that said petitioner is aggrieved by a final judgment of the supreme court of appeals of the State of Virginia, being the highest court of that State, rendered in a certain action at law, in which, at the first hearing, William N. M'Veigh & als. were plaintiffs in error and the petitioner was defendant in error, and at the second hearing the petitioner was plaintiff in error and the said M'Veigh defendant in error.

By reference to the transcript of the record filed herewith, it will be seen that this was an action of debt, brought by the Bank of the Old Dominion against James H. M'Veigh & Son as makers, and William N. M'Veigh as endorser of seven negotiable notes, which notes were discounted by the said bank, dishonored and protested at maturity, and notices of protest duly left, as to five of the notes, at the residence of the endorser in Alexandria, with his white servant in charge of said residence, and as to the other two, with G. W. D. Ramsay, at the banking-house of said bank in Alexandria, which was the place of business of the said endorser.

2 The defence relied upon by the endorser, William N. M'Veigh, was want of notice.

The facts, briefly stated, are as follows:

The notes sued on were accommodation paper, made by James H. M'Veigh & Son, the brother and nephew of William N. M'Veigh, who was the president of the bank, endorsed by the said William N., and discounted by the bank—five of them for the benefit of the makers, and the other two for the benefit of the endorser.

At the time the notes were made, endorsed and discounted, all of the parties were residents of the city of Alexandria, and at their places of residence in said city.

Before the maturity of said notes, to wit, on the 24th day of May, 1861, the United States authorities took possession of the city of Alexandria, and retained such possession during the war.

On the 30th day of May, 1861, William N. M'Veigh left the city of Alexandria and went within the confederate lines to join his family, who were at that time visiting in the county of Culpeper, and did not return to Alexandria until after the close of the war.

He left Alexandria with the purpose of returning as soon as the war was over, supposing that its duration would be short, and left his servants, one of whom was white, in charge of his residence and furniture, and during the war claimed Alexandria as his home, and,

3 while in Richmond, in the spring of 1862, voted for a delegate to represent the city of Alexandria in the general assembly of Virginia.

All of the notes, except two, which were discounted for the benefit of the endorser, and one dated the 9th day of June, 1861, matured before the 16th day of August, 1861.

The defence, as has been stated, was insufficiency of notices of dishonor and protest, and the only question to be decided was this, to wit: were the notices of protest left at the residence and place of business of the endorser in the city of Alexandria sufficient to bind the endorser, he being absent from his residence, within the confederate lines, adhering to the confederacy—he having gone within the confederate lines after the occupation of Alexandria by the federal forces.

The instructions raised this question, which was a mixed question of law and of fact, and the jury at the first trial found for the plaintiff, and the court refused to disturb the verdict, and entered up judgment in accordance therewith.

To this judgment the defendants prayed a writ of error, which was awarded, and, at the hearing, the supreme court of appeals of Virginia reversed the judgment of the corporation court, and remanded the case for a new trial, to be had in conformity with the judgment and
4 the opinion of the court, filed with the record in compliance with a provision of the constitution of the State. To this judgment Moncure, P., and Christian, J., dissented. The judgment was to the effect that the notices of protest left at the residence and place of business of the endorser were not, under the facts and circumstances disclosed by the record, sufficient to bind him, and that in order to bind him as endorser, it was necessary for the plaintiff to give him notice of protest within a reasonable time after the close of the war.

At the new trial ordered as aforesaid, the plaintiff offered evidence for the purpose of proving that the plaintiff did give the endorser notice of dishonor and protest within a reasonable time after the close of the war, to the introduction of which evidence the defendant objected, and the court sustained the objection, to which ruling of the court the plaintiff excepted.

The plaintiff prayed several instructions which the court refused, and to this ruling of the court the plaintiff excepted.

The defendant asked for an instruction which the court granted, and to this ruling the plaintiff excepted.

The jury found a verdict in favor of the endorser as to all the notes, except those which were discounted for his benefit, and the plaintiff moved for a new trial, which motion was overruled, and to this ruling of the court the plaintiff excepted.

5 The Bank of the Old Dominion obtained from the supreme court of appeals of Virginia a writ of error to the said judgment, and at the hearing of this second appeal, the said supreme court affirmed the judgment of the corporation court rendered at the second or new trial of the case.

From this statement it will be seen that the first judgment of the supreme court of appeals of Virginia was not final, in the sense that it could be appealed from to the Supreme Court of the United States, until after the second judgment of said court, because it was not until then ascertained, that the case could not be decided in favor of the plaintiff without the necessity of considering and deciding those questions, which gives the Supreme Court of the United States jurisdiction of cases decided by the highest State courts.

I writ of error is now prayed to the said judgment of the supreme court of appeals of Virginia, upon the ground that the judgment did decide such Federal questions erroneously, and that said judgment could not have been rendered without considering and deciding these questions.

The questions raised by the pleadings, evidence, and instructions were as follows:

1. The legal effect of the proclamation of the President of United States, of date the 29th of April, 1861.

6 2. The question as to whether the allegiance of the citizen to the of the United States is paramount to his allegiance to the State in which he resides.

3. The question as to whether the citizen, upon the breaking out of the war had a constitutional right to elect to which side he would adhere.

4. The question as to whether the legal effect of the ordinance of secession was to make it unlawful for a citizen of Virginia to remain at, or return to, his home within the Federal lines.

5. The question as to whether the absence of the endorser from his residence in Alexandria, when the notices of protest were left there, caused by his leaving said residence after it was within the Federal lines to go within the confederate lines in obedience to the Virginia ordinance of secession, imposed upon the bank the duty of giving him further notice of protest after the close of the war.

An examination of the opinion of the supreme court of appeals, made a part of the judgment by reference thereto, and made a part of the record by the organic law of the State, will show that the said supreme court of appeals decided that the notices of protest left at the residence and place of business of the endorser in Alexandria were insufficient to bind him, because the proclamation of the President had inaugurated a war, and that from the date of said proclamation all intercourse between the sections was by said proclamation made unlawful. The Supreme
7 Court of the United States, in the case of Matthews v. McSha, held that this was a Federal question, and that such was not the effect of said proclamation, and that intercourse was lawful until after the proclamation of August 16th, 1861.

The supreme court of appeals decided that M'r McVeigh had the right to elect to adhere to his State in its act of secession. The Supreme Court of the United States has held to the contrary in numerous cases.

The supreme court of appeals decided that the absence of William N. McVeigh from his residence within the Federal lines for the purpose of adhering to the Confederacy, made notices left at said residence inoperative—a "mere idle form." The Supreme Court of the United States, in the case of Ludlow vs. Ramsay, held the very reverse of this.

The supreme court of appeals decided that it was unlawful for William N. McVeigh to be at his residence in Alexandria when the notices of protest was left there by the plaintiff. We have seen that neither the Constitution or laws of the United States nor the proclamations of the President made it so unlawful. If it was unlawful at all, it must have been because of the legal effect of the ordinance of secession of the State of Virginia, and to this extent the said court decided that said ordinance was valid. The Supreme Court of the United States has repeatedly held to the contrary.

8 It is respectfully submitted that the opinion of the said supreme court of appeals shows that all of these questions were considered and decided by said court, and that the judgment of the court could not have been rendered without considering and deciding these questions.

But even if this was not apparent upon the record, the fact that the judgment rendered by the court would have been legally impossible without considering and deciding these Federal questions raises the conclusive presumption that they were considered and decided. The Supreme Court of the United States could not presume that the supreme court of the State had decided erroneously upon the questions in the case other than Federal, in order to oust the Supreme Court of the United States of its jurisdiction. (Maguire vs. Tyler, 8 Wall., 652).

In support of the conclusion that the judgment of the supreme court of Virginia was legally impossible without a decision of Federal questions, the following authorities are respectfully referred to: Williams vs. The Bank of U. S. (2 Peters, 102); Magruder vs. The Bank of Washington (9 Wheat., 958); Dickens vs. Beal (10 Peters, 572); Lam-

bert vs. Gherelen (9 Howard, 552); Desmase vs. U. S. (93 U. S. R., 605); Speis vs. Gilman (1 N. Y., 326); Foster vs. Julien (24 N. Y., 28); Merchants' Bank vs. Beech (17 John. R., 26); Goodwin vs. McKay (13 Ala., 291).

9,10 To sustain the position that the supreme court of appeals erred in its decision of the Federal questions, the following authorities are cited: White vs. Hart (13 Wall., 646); Sprott vs. U. S. (20 Wall., 459); McQuiddy vs. Ware (20 Wall., 14); Matthews vs. McSted (91 U. S. R., 7); Ludlaw vs. Ramsay (11 Wall., 581); University vs. Finch (18 Wall., 106).

For the foregoing reasons it is respectfully submitted that there is error in the judgment complained of, for which the said judgment ought to be reviewed and reversed by the Supreme Court of the United States, and a writ of error to the said supreme court of appeals of Virginia is respectfully prayed.

THE BANK OF THE OLD DOMINION,
By its att'y, H. O. CLAUGTON.

11 VIRGINIA:

Pleas before the supreme court of appeals of Virginia, held at the State court-house, in the city of Richmond, on Tuesday the 30th day of November, A. D. 1875.

Be it remembered that heretofore, to wit, on the 6th day of March, 1872, came James H. McVeigh and William N. McVeigh, by their counsel, and filed their petition and record, for a writ of error, to a judgment rendered by the corporation court of the city of Alexandria, on the 22nd day July, 1871, in a suit in which the Bank of the Old Dominion was plaintiff and the petitioners and another were defendants, which writ was awarded and the said record and petition are in these words and figures, to wit:

12 Court of appeals of Virginia, Richmond.

To the honorable judges of the supreme court of appeals of Virginia:

The petition of James H. McVeigh and William N. McVeigh respectfully represents that they are aggrieved by a final judgment of the corporation court for the city of Alexandria, rendered in a certain action of debt instituted by the Bank of the Old Dominion against your petitioners.

A transcript of the record of the judgment complained of is herewith presented.

The jury found a verdict for $12,323.55, with interest from January 1, 1866; whereupon your petitioners moved the court to set aside the verdict and grant a new trial, which the court refused to do, and to which ruling of the court your petitioners excepted and tendered their bill of exceptions, which was made a part of the record. (See page 53.) For the facts of the case the court is referred to the bill of exceptions aforesaid.

At the trial of the cause a number of instructions were prayed for by the plaintiff and defendant, some of which were granted and others refused.

The court refused to grant the 5th, 8th, 9th, and 11th instructions prayed for by plaintiff, and also refused to grant the 3d, 6th, 7th, and 11th, and modified the 4th and 5th instructions prayed for by defendant, to which exceptions were taken. (Page 35.) For defendant's instructions, see page 43.

The 3d instruction of defendant ought to have been granted. (Page 44.)

W'm N. McVeigh was endorser on all the papers sued on, and was entitled to notice of the non-payment of the notes. For the certificates of notary see pages 21 and 22, and also from page 18 to 32. The certificates of protest all show that the notices were left at the dwelling of the endorser in the hands of his white servant, without alleging that the servant was over the age of 16, a fact not to be presumed, but to be shown affirmatively. "A certificate of protest shall be prima-facie evidence of what is stated therein," &c., &c. (See section 8, chap. 144, Code.)

Attention is called to sec. 1, chap. 167 of the Code, which provides how a notice may be served. The question is, shall a notice of protest or dishonor be served in the mode prescribed by the section referred to, or, since the passage of the act, to wit, the section aforesaid, are we still left to the loose rules of the law-merchant in respect to the service of notice, referred to in Parsons on Notes and Bills, vol. 1, page 477, section 11?

13 Parsons says: "Personal service is never necessary. It is said to be sufficient to leave a written notice at the dwelling or counting-room of the parties, or a verbal notice with any one who may be found there. This rule, however, must receive a reasonable interpretation. It would not, for example, be sufficient to leave the notice with one known to be casually there, for a temporary purpose; nor with one who was obviously unable to comprehend or deliver a message."

The object of section 1, chap. 167 of the Code, was to fix a definite mode of serving notices of all kinds, and particularly where personal service could not be had. At the time the section aforesaid was passed, our servants, for the most part, were negroes, unable to read and write, and not intelligent enough to deliver a message properly. Hence the importance of providing that the notice should be served on a white person over the age of sixteen years, the law-making power presuming that such a person is intelligent and able to read and write, and to "comprehend and deliver a message."

"A certificate of protest shall be prima-facie evidence of what is stated therein," &c., &c., and no more. If it shows upon its face that the law was not complied with, and that the notice required was not served in the mode prescribed by the law, it has no value as evidence, but on the contrary shows an existence of facts which should exonerate the endorser, who is only bound as the law binds him, that is to say, after due notice.

The facts are that at the time the notice was served the endorser had left Alexandria, and was within the Confederate lines. It is true that no notice could have reached him by course of mail, and it would have been difficult to have transmitted the notice in any manner. But if it had been delivered to a white person over 16 years of age and a member of his family, the chances are that some means would have been found to have the notice conveyed to him beyond the Federal lines, where he and the principal debtor were both residing. He certainly was entitled to the chance, and the plaintiff was in default in not complying with the law.

The court erred in modifying instruction 4 of defendant. (See pages 44, 45.)

Your petitioners were separated by the military lines of two nations engaged in war, from the plaintiff, by means of which contracts already made were suspended and new contracts utterly void, whether made by

the parties directly or through an agent, the agent's authority being also suspended by the existence of hostilities.

The same argument will apply to the modification of 5th instruction.

Instruction 6th.—If instruction 4th, as modified, was proper, instruction 6th ought to have been granted; for we may well contend that if Crupper's agency to renew the notes was not suspended by the war, the authority of the branch at Pearisburg to receive payment was also not suspended.

14 Instruction 7th ought to have been granted.

Taking possession of the assets of the branch bank after the war, and using them for the benefit of the mother bank, was a ratification of the acts of the branch, as it would be inequitable and unjust to deprive the branch of the very means by which it could make good the deposits or refund the money. If the debt were improperly paid to the branch, certainly McVeigh had a right to have it returned, and the assets of the branch was the proper fund to respond to the demand.

The court erred in not granting instruction 11. (See page 49.)

Commercial intercourse was suspended by the war, and during such a condition of things no contract, exchange, or other business transaction between parties separated by the hostile lines could be binding.

Your petitioners will call attention to one instruction prayed for by the plaintiff and erroneously granted by the court, to wit, the 4th instruction. (See pages 38 and 39 of record.)

The action was brought against the makers, McVeigh & Son, and the endorser, William N. McVeigh, under the 11th section of chap. 144 of the code, providing for an action of debt against maker and endorser.

If an action of assumpsit had been brought against the endorser upon the consideration, the note being made for his accommodation, the instruction may have been proper; but as the creditor elected to sue makers and endorsers in an action of debt, the plaintiff is concluded and must prove the material averments of his declaration, one of which being notice of non-payment by the makers.

The plaintiff has declared in debt upon the endorsement, and has averred notice of protest. We contend that the plaintiff is bound to prove it, and that no proof of consideration can be admitted in this form of action to bind the endorser.

The case relied on in the court below was French v. Bank of Columbia, 4th Cranch. (See page 161.)

This was an action of assumpsit, and the case in Cranch cannot be regarded as an authority to support the principle established by the plaintiff's 4th instruction, as the action was brought upon a promise supported by a consideration.

For these and other errors apparent upon the face of the record, your petitioners pray for a writ of error to the judgment complained of.

THE PETITIONERS,
By their counsel, C. W. WATTLES.

I, C. W. Wattles, an attorney practicing in the supreme court of appeals of Virginia, do certify that, in my opinion, there is sufficient matter of error for reversing the judgment complained of in the foregoing petition.

C. W. WATTLES.

Writ of error awarded without a supersedeas. Bond with surety in the penalty of $200 to be given.

15 [page 1] VIRGINIA:

THE BANK OF THE OLD DOMINION
vs.
J. H. MCVEIGH & SON ET ALS. } In debt.

Pleas at the court-house of the city of Alexandria in the corporation court for said city on the 22d day of July, 1871.

Summons sued out.

Be it remembered that heretofore, to wit, on the 18th day of August, 1870, came the Bank of the Old Dominion, by its attorney, and sued out of the clerk's office of the said corporation court a summons against James H. McVeigh and Edgar McVeigh, late copartners trading under the firm-name of J. H. McVeigh & Son, and William N. McVeigh; which summons, with the endorsements and return thereon made, are in the words and figures following, to wit:

Summons.

The commonwealth of Virginia to the sergeant of the city of Alexandria, greeting:

We command you to summon James H. McVeigh and Edgar McVeigh, late copartners trading under the firm-name of J. H. McVeigh & Son, and William N. McVeigh, if they be found within your bailiwick, to appear at the clerk's office of our corporation court for our said city of Alexandria, at the rules to be holden for said court on the
[page 2] first Monday in September, 1870, next, to answer the Bank of the Old Dominion of a plea of debt, on seven protested negotiable notes. Debt, sixteen thousand five hundred dollars; cost of protests, seventeen dollars and fifty cents; interest on $2,502.50 from July 1st, 1861; on $1,202.50 from July 22, 1861; on $5,002.50 from July 26, 1861; on $802.50 from August 9th, 1861; on $2,502.50 from August 15, 1861; on $2,002.50 from September 6, 1861; and, on $2,502.50 from September 15th, 1861, till paid. Damage, $1,500. And have then there this writ.

Witness Morton Marye, clerk of our said court at the court-house aforesaid, this 18th day of August, 1870, and in the 95th year of this commonwealth.

MORTON MARYE, *Clerk.*

Sergeant's return on above.

Executed as to Ja's H. McVeigh, who was not found at his usual place of abode, by delivering at his dwelling-house a true copy of the
16 within summons to Miss Tebbs, who resides at the said dwelling, and who is over the age of sixteen years, and explaining the purport of the same. As to Edgar H. McVeigh, he is not an inhabitant of my bailiwick.

[page 3]

J. T. WARD, *D. S.*,
For J. M. STEWART,
City Serg't.

SEPT. 1, 1870.

Summons.

The Commonwealth of Virginia to the sergeant of the city of Richmond, greeting:

We command you to summon James H. McVeigh and Edgar McVeigh, late copartners trading under the firm-name of J. H. McVeigh & Son, and William N. McVeigh, if they be found within your bailiwick, to appear at the clerk's office of our corporation court for our said city of Alexandria, at the rules to be holden for said court on the first Monday in September, 1870, next, to answer the Bank of the Old Dominion of a plea of debt on seven protested negotiable notes. Debt, sixteen thousand five hundred dollars; cost protest, seventeen dollars and fifty cents; interest on $2,502.50 from July 1, 1861; on $1,202.50 from July 22d, 1861; on $5,002.50 from July 26, 1861; on $802.50 from August 9, 1861; on $2,502.50 from August 15th, 1861; on $2,002.50 from September 6, 1861; and on $2,502.50 from September 15th, 1861, till paid; damage, $1,500; and have then there this writ.

Witness Morton Marye, clerk of our said court, at the court house aforesaid, this 18th day of August, 1870, and in the 95th year of this commonwealth.

[page 4] MORTON MARYE, *Clerk.*

Sergeant's return.

Executed August 26, 1870, by delivering a true copy of the within summons to W'm N. McVeigh. The others not found; do not reside in my bailiwick.

BENJ. T. AUGUST, *D. S.*,
For T. U. DUDLEY, *S'g't C. R.*

And at another day, to wit, at rules held in the clerk's office of said corporation court on the first Monday in September, 1870, came the plaintiff, by its attorney, and filed its declaration against the defendants; which declaration is in the words and figures following, to wit:

Declaration.

In the corporation court for the city of Alexandria, September rules' 1870.

17 THE CITY OF ALEXANDRIA, *to wit:*

The Bank of the Old Dominion complains of James H. McVeigh and Edgar McVeigh, late co-partners trading under the firm-name of James H. McVeigh & Son, and William N. McVeigh, who have been duly summoned, &c., of a plea that they render unto the plaintiff sixteen thousand five hundred dollars principal, and $17.50, the charges
[page 5] of protest of notes hereinafter mentioned, with interest on $2,502.50, part thereof, from the 1st day of July, 1861; on $1,202.50, another part thereof, from the 22d day of July, 1861; on $5,002.50, another part thereof, from the 26th day of July, 1861; on $802.50, another part thereof, from the 9th August, 1861; on $2,502.50, another part thereof, from the 15th day of August, 1861; on $2,002.50, another part thereof, from the 6th day of September, 1861; and on $2,502.50, the residue thereof, from the 15th day of September, 1861, which they owe to and unjustly detain from the said plaintiff.

And thereupon the plaintiff says that heretofore, to wit, on the 30th

day of March, 1861, the said James H. McVeigh and Edgar McVeigh, by their firm-name of J. H. McVeigh & Son, made and signed a note bearing date the day last mentioned, by which they promised to pay, ninety days after the date thereof, to the order of the said William N. McVeigh, twenty-five hundred dollars, at Bank of Old Dominion, value received; and after the said note was made, and before it became payable, the said William N. McVeigh endorsed the said note to the plaintiff; and the plaintiff avers that afterwards, when the said note
page 6] became payable, according to the tenor and effect thereof, to wit, on the 1st day of July, 1861, the said note was duly presented at the Bank of the Old Dominion for payment thereof, and payment of the sum of money thereon specified was then and there duly required, and the payment so required was not made, but was wholly refused, and thereupon the said note was duly protested for non-payment, to wit, on the 1st day of July, 1861, the charges of which protest amount to $2.50; of all of which premises, and especially the said protest, the said William N. McVeigh had due notice.

And, further, the plaintiff says that heretofore, to wit, on the 20th day of April, 1861, the said James H. McVeigh and Edgar McVeigh, by the firm-name of J. H. McVeigh & Son, made and signed a certain other note bearing date the day last mentioned, by which they promised to pay, ninety days after the date thereof, to the order of the said William N. McVeigh, twelve hundred dollars, at Bank Old Dominion, value received; and after the said note was made, and before it became payable, the said William N. McVeigh endorsed the said note to
[page 7] the plaintiff; and the plaintiff avers that afterwards, when the said note became payable, according to the tenor and effect thereof, to wit, on the 22d day of July, 1861, the said note was duly presented at the Bank of the Old Dominion for payment thereof, and payment of the sum of money thereon specified was then and there duly required, and the payment so required was not made, but was
18 wholly refused, and thereupon the said note was duly protested for non-payment, to wit, on the 22d day of July, 1861, the charges of which protest amount to $2.50; of all of which premises, and especially the said protest, the said William N. McVeigh had due notice.

And further the plaintiff says that heretofore, to wit, on the 27th day of April, 1861, the said James H. McVeigh and Edgar McVeigh, by the firm-name of J. H. McVeigh & Son, made and signed a certain other note bearing date the last mentioned, by which he promised to pay, ninety days after the date thereof, to the order of the said William N. McVeigh, five thousand dollars, at Bank Old Dominion, value received; and after the said note was made, and before it became
[page 8] payable, the said William N. McVeigh endorsed the said note to the plaintiff; and the plaintiff avers that afterwards, when the said note became payable according to the tenor and effect thereof, to wit, on the 29th day of July, 1861, the said note was duly presented at the Bank of the Old Dominion for payment thereof, and payment of the sum of money thereon specified was then and there duly required, and the payment so required was not made, but was wholly refused, and thereupon the said note was duly protested for non-payment, to wit, on the 29th day of July, 1861, the charges of which protest amount to $2.50; of all of which premises, and especially the said protest, the said William N. McVeigh had due notice.

And further the plaintiff says, that heretofore to wit, on the 11th day of May, 1861, the said James H. McVeigh and Edgar McVeigh, by their firm-name of J. H. McVeigh & Son, made and signed a certain other

note bearing date the day last mentioned, by which they promised to pay, ninety days after the date thereof, to the order of the said
[page 9] William N. McVeigh, eight hundred dollars, at Bank Old Dominion, value received; and after the said note was made, and before it became payable, the said William N. McVeigh endorsed the said note to the plaintiff; and the plaintiff that afterwards, when the said note became payable according to the tenor and effect thereof, to wit, on the 12th day of August, 1861, the said note was duly presented at the Bank of the Old Dominion for payment thereof, and payment of the sum of money thereon specified was then and there duly required, and the payment so required was not made, but was wholly refused, and thereupon the said note was duly protested for non-payment, to wit, on the 12th day of August, 1861, the charges of which protest amount to $2.50; of all of which premises, and especially the said protest, the said William N. McVeigh had due notice.

And further the plaintiff says that heretofore, to wit, on the 17th day of May, 1861, the said James H. McVeigh and Edgar McVeigh, by their firm-name of J. H. McVeigh & Son, made and signed a certain other note bearing date the day last mentioned, by which they
[page 10] promised to pay, ninety days after the date thereof, to the order of the said William N. McVeigh, twenty-five hundred dollars, value received, negotiable and payable at the Bank of the Old Dominion; and after the said note was made, and before it became pay-
19 able, the said William N. McVeigh endorsed the said note to the plaintiff; and the plaintiff avers that afterwards, when the said note became payable according to the tenor and effect thereof, to wit, on the 17th day of August, 1861, the said note was duly presented at the Bank of the Old Dominion for payment thereof, and payment of the sum of money thereon specified was then and there duly required, and the payment so required was not made, but was wholly refused, and thereupon the said note was duly protested for non-payment, to wit, on the 17th day of August, 1861, the charges of which protest amount to $2.50; of all of which premises, and especially the said protest, the said William N. McVeigh had due notice.

And further the plaintiff says that heretofore, to wit, on
[page 11] the 8th day of June, 1861, the said James H. McVeigh and Edgar McVeigh, by their firm-name of J. H. McVeigh & Son, made and signed a certain other note bearing date the day last mentioned, by which they promised to pay, ninety days after the date thereof, to the order of the said William N. McVeigh, two thousand dollars, at Bank Old Dominion, value received; and after the said note was made, and before it became payable, the said William N. McVeigh endorsed the said note to the plaintiff; and the plaintiff avers that afterwards, when the said note became payable according to the tenor and effect thereof, to wit, on the 9th day of September, 1861, the said note was duly presented at the Bank of the Old Dominion for payment thereof, and payment of the sum of money thereon specified was then and there duly required, and the payment so required was not made, but was wholly refused, and thereupon the said note was duly protested for non-payment, to wit, on the 9th day of September, 1861, the charges of which protest amount to $2.50; of all of which premises, and especially the said protest, the said William N. McVeigh had due notice.

And further the plaintiff says that heretofore, to wit, on
[page 12] the 17th day of June, 1861, the said James H. McVeigh and Edgar McVeigh, by their firm-name of J. H. McVeigh & Son, made and signed a certain other note bearing date the day last men

tioned, by which they promised to pay, ninety days after the date thereof, to the order of the said William N. McVeigh, twenty-five hundred dollars, at Bank Old Dominion, value received; and after the said note was made, and before it became payable, the said William N. McVeigh endorsed the said note to the plaintiff; and the plaintiff avers that afterwards, when the said note became payable according to the tenor and effect thereof, to wit, on the 18th day of September, 1861, the said note was duly presented at the Bank of the Old Dominion for payment thereof, and payment of the sum of money thereon specified was then and there duly required, and the payment so required was not made, but was wholly refused, and thereupon the said note was duly protested for non-payment, to wit, on the 18th day of September, 1861, the charges of which protest amount to $2.50; of all of which premises,
[page 12] and especially the said protest, the said William N. McVeigh had due notice; which said seven sums make up the sum
20 above demanded, and which costs of protest make up the amount of $17.50 above demanded for costs of protest. By virtue whereof the said James H. McVeigh and Edgar McVeigh, late copartners under the firm-name of J. H. McVeigh & Son, and William N. McVeigh, are liable to the plaintiff, and there is right of action for the plaintiff against them for the principal, charges of protest and interest above demanded, and the same and every part thereof remains unpaid, though the same has long since been due, and the said defendants have been often requested to pay the same, but have refused so to do, and still do refuse, to the damage of the plaintiff $1,500, and therefore he sues.

CLAUGHTON, *P. Q.*

Conditional judgment.

Whereupon the defendants, James H. McVeigh and William N. McVeigh, having been duly summoned and not appearing, on the motion of the plaintiff, by its attorney, it was ordered that judgment be entered for the plaintiff against the said defendants, James H.
[page 14] McVeigh and William N. McVeigh, for the debt, interest, and charges of protest in the declaration mentioned, and also for the damages which the plaintiff had sustained by occasion of the detention of the said debt, unless the said defendants should appear and plead to issue at the then next rules, and this cause was continued for service as to defendant Edgar McVeigh to the then next rules.

Conditional judgment confirmed.

At which day, to wit, at rules held in the clerk's office of the said corporation court of the first Monday in October, 1870, the said defendants, James H. McVeigh and William N. McVeigh, still failing to appear, on the motion of the plaintiff, by its counsel, it was ordered that the last order made against them in this cause be confirmed, and this cause was continued for service as to defendant Edgar McVeigh to the next rules.

Plea nil debet.

And at another day, to wit, at a corporation court held for the city of Alexandria, at the court-house of said city, on the 10th day of October, 1870:

This cause being docketed as to J. H. McVeigh & Son and
[page 15] another, this day came the parties, by their attorneys, and the defendants say they owe nothing of the debt in the declaration

and endorser of the said note, and all others whom it doth or may concern, for all costs, exchange, re-exchange, charges, damages, and interest suffered and to be suffered for the want of payment thereof. And in the same day I delivered notice of protest, addressed to W'm N. McVeigh, to G. W. D. Ramsay at Bank of the Old Dominion, the place of business of said W. N. McVeigh; he reported out of town, informing them respectively that the said endorsers were held liable
[page 20] for the payment of said note. In testimony whereof I have hereunto set my hand and affixed my seal notarial on the day and year aforesaid.

[SEAL.] W. C. YEATON,
Notary Public.

Tax on seal, $1.50; cost of protest, $1.00—$2.50.

Note.

$1,200.00.] ALEXANDRIA, 20 *April*, 1861.

Ninety days after date we promise to pay to the order of W'm N. McVeigh twelve hundred dollars at Bank Old Dominion, value received.

J. H. McVEIGH & SON.

Cr. drawer.

W. N. McV.

(Endorsed:) W. N. McVeigh.

Protest.

$1,200.00.] ALEXANDRIA, 20*th April*, 1861.

Ninety days after date we promise to pay to the order of W'm N. McVeigh twelve hundred dollars at Bank Old Dominion, value received.

J. H. McVEIGH & SON.

Cr. drawer.

W. N. McV.

[page 21] (Endorsed:) W. N. McVeigh.

24 STATE OF VIRGINIA,
Alexandria County, to wit:

Be it known, that on the twenty-second day of July, in the year of our Lord one thousand eight hundred and sixty-one, at the request of the cashier of the office of discount and deposite of the Old Dominion Bank at Alexandria, I, Robert J. Smith, notary public, by lawful authority duly commissioned and sworn, dwelling in Alexandria, in the county and State aforesaid, presented at the Bank of the Old Dominion, at Alexa., the original note whereof the above is a true copy, and demanded of P. E. Hoffman, cas., payment of the sum of money in the said note specified, whereunto he replied, "There are no funds." Therefore, I, the said notary, have protested, and do by these presents solemnly protest against the drawers and endorser of the said note, and all others whom it doth or may concern, for all costs, exchange, re-exchange, charges, damages, and interest suffered and to be suffered for the want of payment thereof. And in the same day I delivered notice of protest to W'm N. McVeigh by leaving it at his dwelling, in the hands of his white servant, informing him that he, the said endorser, was
[page 22] held liable for the payment of said note.

In testimony whereof I have hereunto set my hand and affixed my seal notarial, on the day and year aforesaid.

[SEAL.] ROB'T J. SMITH,
Notary Public.

Tax on seal, $1.50; cost of protest, $1.00—$2.50.
Protest-book No. 5, page 8.

Note.

$5,000.00.] ALEXANDRIA, 27*th April*, 1861.

Ninety days after date we promise to pay to the order of W'm N. McVeigh five thousand dollars at Bank Old Dominion, value received.

J. H. McVEIGH & SON.

Cr. drawer.

W. N. McV.

(Endorsed:) W. N. McVeigh.

25 *Protest.*

$5,000.00.] ALEXANDRIA, 27*th April*, 1861.

Ninety days after date we promise to pay to the order of W'm N. McVeigh five thousand dollars at Bank Old Dominion, value received.

J. H. McVEIGH & SON.

Cr. drawer.

W. N. McV.

[page 23] (Endorsed:) W. N. McVeigh.

STATE OF VIRGINIA,

Alexandria County, to wit:

Be it known, that on the twenty-ninth day of July, in the year of our Lord one thousand eight hundred and sixty-one, at the request of the cashier of the office of discount and deposite of the Old Dominion Bank at Alexandria, I, Robert J. Smith, notary public, by lawful authority duly commissioned and sworn, dwelling in Alexandria, in the county and State aforesaid, presented at the Bank of the Old Dominion at Alexa., V'a, the original note whereof the above is a true copy, and demanded of P. E. Hoffman, cas, payment of the sum of money in the said note specified, whereunto he replied, "There are no funds."

Therefore, I, the said notary, have protested, and do by these presents, solemnly protest against the drawers and endorser of the said note, and all others whom it doth or may concern, for all costs, exchange, re-exchange, charges, damages, and interest suffered and to be suffered for the want of payment thereof.

And in the same day I delivered a notice of protest to W'm N. McVeigh, by leaving it at his dwelling in the hands of his white [page 24] servant, informing him that he, the said endorser, was held liable for the payment of said note.

In testimony whereof I have hereunto set my hand and affixed my seal notarial on the day and year aforesaid.

[SEAL.]

ROB'T J. SMITH,
Notary Public.

Tax on seal, $1.50; cost of protest, $1.00—$2.50.
Protest-book No. 5, page 38.

Note.

$800.00.] ALEXANDRIA, 11*th May*, 1861.

Ninety days after date we promise to pay to the order of William N. McVeigh eight hundred dollars at Bank Old Dominion, value received.

J. H. McVEIGH & SON.

Cr. drawer.

W. N. McV.

(Endorsed:) W. N. McVeigh.

26 *Protest.*

$800.00.] ALEXANDRIA, 11*th May*, 1861.

Ninety days after date we promise to pay to the order of William N. McVeigh eight hundred dollars at Bank Old Dominion, value received.

J. H. McVEIGH & SON.

Cr. drawer.

W. N. McV.

[page 25] (Endorsed:) W. N. McVeigh.

STATE OF VIRGINIA,
Alexandria County, to wit:

Be it known that on the twelfth day of August, in the year of our Lord one thousand eight hundred and sixty-one, at the request of the cashier of the office of discount and deposite of the Old Dominion Bank at Alexandria, I, Robert J. Smith, notary public, by lawful authority duly commissioned and sworn, dwelling in Alexandria, in the county and State aforesaid, presented at the Bank of the Old Dominion at Alexa. the original note whereof the above is a true copy, and demanded of P. E. Hoffman, cas., payment of the sum of money in the said note specified, whereunto he replied, "There are no funds."

Therefore, I, the said notary, have protested, and do by these presents solemnly protest, against the drawees and endorser of the said note, and all others whom it doth or may concern, for all costs, exchange, re-exchange, charges, damages, and interest suffered and to be suffered for the want of payment thereof.

And in the same day I delivered notice of protest to William N. McVeigh by leaving it at his dwelling, in the hands of his white
[page 26] servant, informing him that he, the said endorser, was held liable for the payment of said note.

In testimony whereof I have hereunto set my hand and affixed my seal notarial on the day and year aforesaid.

[SEAL.] ROB'T J. SMITH,
Notary Public.

Tax on seal, $1.50; cost of protest, $1.00—$2.50.

Note.

$2,500.00.] ALEXANDRIA, 17*th June*, 1861.

Ninety days after date we promise to pay to the order of William N. McVeigh twenty-five hundred dollars at Bank Old Dominion, value received.

J. H. McVEIGH & SON.

(Endorsed:) W. N. McVeigh.

1863, June 10.—By cash on acc't, twenty-three hundred and seventy-nine dollars.

27 *Protest.*

$2,500.00.] ALEXANDRIA, 17*th June*, 1861.

Ninety days after date we promise to pay to the order of William N.

McVeigh twenty-five hundred dollars at Bank Old Dominion, value received.

J. H. McVEIGH & SON.

[page 27] (Endorsed:) W. N. McVeigh.

STATE OF VIRGINIA,
Alexandria County, to wit:

Be it known that on the eighteenth day of September, in the year of our Lord one thousand eight hundred and sixty-one, at the request of the cashier of the office of discount and deposite of the Old Dominion Bank at Alexandria, I, Robert J. Smith, notary public, by lawful authority duly commissioned and sworn, dwelling in Alexandria, in the county and State aforesaid, presented at the Bank of the Old Dominion at Alexandria the original note whereof the above is a true copy, and demanded of P. E. Hoffman, cas., payment of the sum of money in the said note specified, whereunto he replied, "There are no funds."

Therefore I, the said notary, have protested, and do by these presents solemnly protest, against the drawers and endorser of the said note, and all others whom it doth or may concern, for all costs, exchange, re-exchange, charges, damages, and interest suffered and to be suffered for the want of payment thereof.

And in the same day I delivered notice of protest to W'm N. McVeigh by leaving it at his dwelling, in the hands of his white serv-
[page 28] ant, informing him that he, the said endorser, was held liable for the payment of said note.

In testimony whereof I have hereunto set my hand and affixed my seal notarial on the day and year aforesaid.

[SEAL.] ROB'T J. SMITH,
Notary Public.

Tax on seal, $1.50; cost of protest, $1.50—$2.50.

Note.

$2,000.00.] ALEXANDRIA, 8*th June*, 1861.

Ninety days after date we promise to pay to the order of William N. McVeigh two thousand dollars at Bank Old Dominion, value received.

J. H. McVEIGH & SON.

Cr. drawer.

W. N. McV.

(Endorsed:) W. N. McVeigh.

28 *Protest.*

$2,000.00] ALEXANDRIA, 8*th June*, 1861.

Ninety days after date we promise to pay to the order of William N. McVeigh two thousand dollars at Bank Old Dominion, value received.

J. H. McVEIGH & SON.

Cr. drawer.

W. N. McV.

[page 29] (Endorsed:) W. N. McVeigh.

STATE OF VIRGINIA,
Alexandria County, to wit:

Be it known that on the ninth day of September, in the year of our Lord one thousand eight hundred and sixty-one, at the request of the cashier of the office of discount and deposite of the Old Dominion Bank at Alexandria, I, Robert J. Smith, notary public, by lawful authority duly commissioned and sworn, dwelling in Alexandria, in the county and State aforesaid, presented at the Bank of the Old Dominion, at Alexa., the original note whereof the above is a true copy, and demanded of P. E. Hoffman, cas., payment of the sum of money in the said note specified, whereunto he replied, "There are no funds."

Therefore I, the said notary, have protested, and do by these presents solemnly protest, against the drawers and endorser of the said note, and all others whom it doth or may concern, for all costs, exchange, re-exchange, charges, damages, and interest suffered and to be suffered for the want of payment thereof.

And in the same day I delivered notice of protest to W'm
[page 30] N. McVeigh by leaving it at his dwelling, in the hands of his white servant, informing him that he, the said endorser, was held liable for the payment of said note.

In testimony whereof I have hereunto set my hand and affixed my seal notarial on the day and year aforesaid.

[SEAL.] ROBERT J. SMITH,
Notary Public.

Tax on seal, $1.50; cost of protest, $ .00—$2.50.

Note.

$2,500.] ALEXANDRIA, *May 7th*, 1861.

Ninety days after date we promise to pay to the order of W. N. McVeigh twenty-five hundred dollars, for value received, negotiable and payable at Bank of the Old Dominion.

J. H. McVEIGH & SON.

(Endorsed:) W. N. McVeigh.

29 1863, June 10.—By cash of M. L. Baldwin, as per C. A. Baldwin & Co.'s check, $1,814.95.

Protest.

$2,500.] ALEXANDRIA, *May 17th*, 1861.

Ninety days after date we promise to pay to the order of W. N. McVeigh twenty-five hundred dollars, for value received, negotiable and payable at Bank of the Old Dominion.
[page 31]

J. H. McVEIGH & SON.

(Endorsed:) W. N. McVeigh.

STATE OF VIRGINIA,
Alexandria County, to wit:

Be it known that on the seventeenth day of August, in the year of our Lord one thousand eight hundred and sixty-one, at the request of the cashier of the office of discount and deposite of the Old Dominion Bank, at Alexandria, I, Robert J. Smith, notary public, by lawful authority duly commissioned and sworn, dwelling in Alexandria, in the county

and State aforesaid, presented at the Bank of the Old Dominion, at Alex'a, the original note, whereof the above is a true copy, and demanded of P. E. Hoffman, cas., payment of the sum of money in the said note specified, whereunto he replied, "There are no funds."

Therefore I, the said notary, have protested, and do by these presents solemnly protest against the drawers and endorser of the said note, and all others whom it doth or may concern, for all costs, ex-
[page 32] change, re-exchange, charges, damages, and interest suffered, and to be suffered, for the want of payment thereof.

And in the same day I delivered notice of protest to W. N. McVeigh, by leaving it at his dwelling, in the hands of his white servant, informing him that he, the said endorser, was held liable for the payment of said note.

In testimony whereof I have hereunto set my hand and affixed my seal notarial on the day and year aforesaid.

[SEAL.] ROB'T J. SMITH,
Notary Public.

Tax on seal, $1.50; cost of protest, $1.00—$2.50.

The plaintiff then proved, by W'm H. Lambert, that a certain check drawn by C. A. Baldwin & Co., dated January 29, 1863, on the Bank of the Old Dominion in favor of M'r's Maria L. Baldwin, in the words and figures following, to wit:

JANUARY 29, 1863.

Cashier Bank Old Dominion pay to the order of M'r's Maria
[page 33] L. Baldwin any money she may call for, taking receipt for same on the back of this check, and charge same to our account.

C. A. BALDWIN & CO.

30 Was presented to him about the 1st of June, 1863, by Robert Crupper, who assumed to act as agent of W'm N. McVeigh, and believing that he was such agent under direction of said Crupper, made the endorsement on said check (Received, June 10th, 1863, of the Bank of the Old Dominion eighteen hundred and fourteen $\frac{95}{100}$ dollars, on account of the within cheek. Maria L. Baldwin,), and applied the amount, to wit, $1,814.95, to the credit of the note dated the 17th May, 1861, and now sued on; that said W'm N. McVeigh did not so direct it, but it was done on the direction of said Crupper alone; that afterwards the said Crupper, still pretending to act as the agent of W'm N. McVeigh, called on him as cashier of said bank for four promissory notes of W'm Cogan, amounting to $2,000 and interest, which had been deposited in said bank for collection, and that upon said demand, without said Crupper's producing any authority therefor, but relying on the statement of Crupper, delivered him said notes; that afterwards said Crupper paid him the sum of $2,379, the amount of said notes,
[page 34] and directed him to apply the same to the credit of the note dated the 17th June, 1861, now sued on; that at the time of said demand the said Crupper produced the bank-book of W'm N. McVeigh, in which said notes were entered to the credit of McVeigh for collection, and also the bank-book of C. A. Baldwin & Co. at the check to M'r's M. L. Baldwin was presented and entered up, and thereupon the plaintiff asked the following question of the witness: "Do you know or not that Robert Crupper, at the time he made these transactions as the agent of W'm N. McVeigh, was acting generally as his

agent in the city of Alexandria; that at the date of these transactions M'r W'm N. McVeigh was not in Alexandria, but in the lines of the Confederate States ?"

To this question the def'ts objected, but the court allowed said question to be put and answered, to which the def'ts excepted, and prayed that this their biil of exceptions may be signed, sealed, and enrolled.

[SEAL.] E. M. LOWE,
Judge Corp'n C't City of Alexandria.

Order of July 20th, 1871.

[page 35] And at another day, to wit: At a corporation court continued and held for said city at the court-house aforesaid on the 20th day of July, 1871.

The jury appeared in court pursuant to adjournment. The attorney for the plaintiff, as well the attorney for the defendants, presented certain instructions, which they asked the court to give the jury; and after the argument of counsel upon the said instructions, the court refused to grant the 5th, 8th, 9th, and 11th instructions prayed for by plaintiff; also refused to grant the 3d, 6th, 7th, and 11th, and modified the 4th and 5th instructions prayed for by defendant.

31 *Exceptions by plaintiff and defendants.*

Whereupon the plaintiff excepted to the ruling of the court in refusing the 5th, 8th, 9th, and 11th instructions prayed for by plaintiff, and in granting 1st, 2d, 4th, 5th, 8th, 9th, and 10th instructions prayed by the defendant: also the defendant excepted to the ruling of the court in refusing the 3d, modification of 4th and 5th, and refusing the 6th, 7th, and 11th instructions prayed by the defendant, and in granting the 1st, 4th, 6th, 7th, and 10th instructions prayed by plaintiff.

[page 36] By consent of parties and with the leave of the court, the jury in this cause are adjourned over till to-morrow morning at 9 o'clock. The court charged the jury to confer with no one concerning this cause.

The following are copies of instructions prayed for by plaintiff and defendants:

Instructions asked by plaintiff.

[page 37] BANK OF THE OLD DOMINION
vs.
JA'S H. MCVEIGH & SON & AL.

1. If the jury shall believe from the evidence that the notes sued on were duly protested, and due notice of the protest given to the endorser, they must find for the plaintiff, although they believe from the evidence that the amount of said notes was paid by the defendants at the branch of the Bank of the Old Dominion at Pearisburg in the month of May, 1864, in depreciated Confederate currency, while the notes sued on were in the possession of the plaintiff in the city of Alexandria.

2. If the jury shall believe from the evidence that the endorser, William N. McVeigh, after the making and endorsing of the said notes, left the city of Alexandria, and was absent from said city at the time of the

maturity of said notes, and that notice of demand and protest was left by the notary at the residence of the said endorser with a white servant of the endorser, such notice is sufficient in law, and the jury
[page 38] must find for the plaintiff, provided they also find that at the time of said notice the said McVeigh had a residence in the city of Alexandria.

3. If the jury shall believe from the evidence that after the making and endorsing of the notes sued on, the endorser, William N. McVeigh, left the city of Alexandria and was absent from said city at the time of the maturity of such notes, and the same were duly protested, and due notice of demand and protest left at the place of business of said endorser with a white person employed at such place, such notice was sufficient to bind the endorser, and the jury must find for the plaintiff, provided they also find that at the time of said notice the said McVeigh had a place of business in the city of Alexandria.

32 4. If the jury shall believe from the evidence that any of the notes sued on were made by Ja's H. McVeigh & Son for
[page 39] the accommodation of the said William N. McVeigh, and that they were discounted for the use of W. N. McVeigh, and that he received the proceeds of the same, then no notice of demand and of protest of such notes were necessary to bind the said endorser, and the jury must find for the plaintiff as to such notes.

5. If the jury shall believe from the evidence that the defendant, William N. McVeigh, was president of the Bank of the Old Dominion, and had knowledge that the notes were not paid at maturity, and knew that the same were paid in Confederate currency in 1861 at the branch bank at Pearisburg, he is responsible as endorser, although he did not receive special notice of demand and protest at the time such demand and protest were made, or in reasonable time after the close of the war.

6. If the jury shall believe from the evidence that Robert Crupper was the agent of William N. McVeigh during the war, and authorized by him to act as his agent under appointment made while the said Crupper, plaintiff, and McVeigh were on the same side of the
[page 40] belligerent lines, and as such agent demanded and received the Cogan notes from the bank, and that the said Crupper as such agent collected the amount of the said notes and paid the amount collected on the note in suit upon which said credit appears endorsed, and that said note was one that was made for the accommodation of said endorser, and the proceeds of which were received by him, such credit binds the said McVeigh, and the jury must find accordingly.

7. If the jury shall believe from the evidence that Robert Crupper was the agent of William N. McVeigh under appointment made while the said Crupper, plaintiff, and McVeigh were on the same side of the belligerent lines, and as such agent called on the officers of the Bank of the Old Dominion with the check of C. A. Baldwin & Co., written and signed by McVeigh as a member of said firm, and endorsed by Maria J. Baldwin in the form required by the terms of said check, and directed such officer to apply the same to the credit of the note sued
[page 41] on, upon which said credit is endorsed, and that said note is one made for the accommodation of the said William N. McVeigh and discounted for his use, then such credit is binding upon the said McVeigh, and the jury must find accordingly.

8. If the jury shall believe from the evidence that Robert Crupper was the agent of William N. McVeigh, and acting as the agent of William N. McVeigh under authority conferred before the war paid to the plaintiff as a credit upon the note upon which said credit is endorsed

the money collected by said Crupper from William Cogan, being a note made for the accommodation of said McVeigh and discounted for his use, the plaintiff had the right to presume that he was his agent for that purpose, and such credit was rightly made, and the jury must find accordingly.

9. If the jury shall believe from the evidence that Robert Crupper was the agent of W'm N. McVeigh under appointment made
33 before the war, and claiming to act as the agent of William N. McVeigh in the matter hereinafter named paid the check
[page 42] aforesaid on account of the note upon which said credit is endorsed, and at the same time the bank-book was balanced, and the said book, together with the check, was handed to the said Crupper and by him forwarded to C. A. Baldwin & Co., without any objection made by them at the time they received them, said transaction is binding upon C. A. Baldwin & Co.

10. If the jury shall believe from the evidence that the said William N. McVeigh and C. A. Baldwin & Co. were notified of the fact that Robert Crupper, as their agent, had made said transactions with the plaintiff, and did not, as soon as they received such notice, or in a reasonable time thereafter, disaffirm such agency, they are bound by the acts of said Crupper.

11. If the jury shall believe from the evidence that the said William N. McVeigh has suffered no damage from the acts aforesaid of the said Robert Crupper, claiming to act as his agent in the manner aforesaid, and that such acts have not prejudiced his interests nor effected his rights, he has no right to complain of such acts or repudiate the same.

[page 43] *Instructions asked by defendants.*

1. If the jury shall believe from the evidence aforesaid that at the maturity and dishonor of the notes sued on the city of Alexandria and its vicinity were in the occupation of the forces of the United States; that W'm N. McVeigh, the endorser on said notes, had some time prior to said maturity and dishonor abandoned his residence in said city, and had gone within the lines of the forces of the Confederate States with the knowledge of the plaintiff, and resided therein with his family until the close of the war, and that hostilities were, at the date of said maturity and dishonor, flagrant between the United States and the Confederate States, then that the notices of the protest of said notes sued on, left either at the former place of business or at the former residence of W'm N. McVeigh, in the city of Alexandria, were insufficient to bind W'm N. McVeigh, and they must find for him, unless they should believe that the plaintiff, within a reasonable time after the cessation of hostilities, gave notice of the dishonor of said notes to W'm N. McVeigh.

2. That if, by reason of the existence of war, whether foreign or civil, the holder of negotiable notes residing within territory in the
[page 44] firm occupation of one of the belligerents, and the endorser on said notes residing within the territory of the other belligerent, the holder of such negotiable notes is excused from giving notice of protest and dishonor to said endorser during the continuance of the war; but on the cessation of hostilities he is bound within a reasonable time after the removal of the impediments which excused him from so doing to give notice to the indorser.

3. If the jury shall believe from the evidence aforesaid that the only notice of the non-payment and dishonor of the notes sued on
34 given to W'm N. McVeigh was the notice contained in the nota-

rial certificate of protest, then said notice was invalid and inoperative to bind said W'm N. McVeigh, and they must find for him.

4. If the jury shall believe from the evidence aforesaid that on and after the 7th day of June, 1861, the said James H. McVeigh and W'm N. McVeigh were residing within territory held in the firm occupation of the forces of the Confederate States, and so continued to
[page 45] reside until the close of the war, and that the said plaintiff had its domicil from said date and ever since in the city of Alexandria, held in the firm occupation of the forces of the United States during the war, then that the two notes sued on, one bearing date the 8th of June, 1861, and the other June the 17th, 1861, are illegal and void, and they must on these notes find for the defendants, unless they also find that said notes were given in renewal of notes made before the war, and by an agent acting under authority conferred before the war.*

5. If the jury shall believe from the evidence aforesaid that the said notes, bearing date respectively the 8th and 17th days of June, 1861, were made by the defendants whilst residing within the lines occupied and firmly held by the forces of the Confederate States, and that said notes were discounted by the plaintiff whilst the said defendants were within the Confederate lines as aforesaid, and that the plaintiff was, at the time of the making and discounting of the said notes, located and doing business within the lines firmly held and occupied by
[page 46] the forces of the United States, then that said making and discounting were illegal and void and not binding on the defendants, unless said notes were given in renewal of notes made and delivered before the war by an agent residing within the lines of the same belligerent with the plaintiff, and acting under an authority conferred before the war. †

6. If the jury shall believe from the evidence aforesaid that the defendant, James H. McVeigh, in the year 1864, paid the notes sued on to the branch bank of the Bank of the Old Dominion at Pearisburg, in Giles County, Virginia, and that said payment was accepted by said branch bank, then that said payment is a discharge of the said notes, although the same was made in Confederate money.

7. But if said branch bank at Pearisburg had no lawful right to accept said payment in discharge of the notes sued on, yet if the jury shall believe from the evidence aforesaid that after the close
[page 47] of the late civil war the plaintiff took possession of all the assets of the branch bank at Pearisburg, amongst which were means and assets acquired during the war by dealing in Confederate currency, and in which were embraced the payments made by James H. McVeigh & Son, and appropriated said assets to their own use, then such appropriation is an adoption and ratification of the act of the said branch at Pearisburg, and they must find for the defendants.

35 8. If the jury shall believe from the evidence aforesaid that the plaintiff appropriated the sum of $1,814.95, the amount in its hands due the firm of C. A. Baldwin & Co. to the credit of a note dated the 17th of May, 1861, drawn by James H. McVeigh & Son, and indorsed by W'm N. McVeigh, that such appropriation was illegal, unless they believe from the evidence that it was done with the authority of C. A. Baldwin & Co. or of the holder of the check for said balance.

9. That even if the jury shall believe that Robert Crupper
[page 48] was the agent of W'm N. McVeigh, that such agency did not confer on him, the said Crupper, an authority to direct the

* NOTE.—Red lines indicate modification by judge.

† Red lines indicate modification by judge.

plaintiff to apply the money of C. A. Baldwin & Co. to the credit of the said note of James H. McVeigh & Son, except with the authority and consent of C. A. Baldwin & Co.

10. That the delivery of the four notes of W'm Cogan, deposited by the defendant, W'm N. McVeigh, with the plaintiff for collection, to Robert Crupper, was illegal, unless the same was done with the authority and sanction of W'm N. McVeigh, and if the jury shall believe that said notes were delivered to Robert Crupper without the authority of W'm N. McVeigh, and said Crupper collected the amount of said notes, to wit, $2,379, and paid the same to the plaintiff, the plaintiff knowing the same, the plaintiff had no right to apply said sum to the credit of the note, bearing date the 17th June, 1861, of James H. McVeigh & Son and indorsed by W'm N. McVeigh.

[page 49] 11. If the jury shall believe from the evidence aforesaid that the check of C. A. Baldwin & Co. on the plaintiff, dated the 29th day of January, 1863, was drawn by the firm of C. A. Baldwin & Co. at that date, in the city of Richmond, with a view of being sent through the hostile lines, and was so sent, received, and acted on by the plaintiff, then such appropriation of the proceeds of a balance due C. A. Baldwin & Co. by the plaintiff to the note of James H. McVeigh & Son, was illegal and void.

12. That should the jury find in favour of the plaintiff, interest during the period of the war should not be allowed.

And at another day, to wit, at a corporation court continued and held for the city of Alexandria, at the court-house of said city, on the 21st day of July, 1871:

The jury appeared in court pursuant to their adjournment, and after hearing the arguments of counsel the jury retired to their

[page 50] room to consult of their verdict, and after a time returned into court with the following verdict:

"We, the jury, find for the plaintiff in the sum of twelve thousand three hundred and twenty-three and $\frac{55}{100}$ dollars, with interest from January 1, 1866."

And now at this day, to wit, at a corporation court continued and held for said city, at the court-house aforesaid, on the 22d day of July, 1871:

36 This day came the parties, by their attorneys, and the defendants, by their counsel, moved the court to set aside the verdict of the jury in this cause and grant a new trial, which motion is overruled.

Therefore, it is considered by the court that the plaintiff recover against the defendant the sum of twelve thousand three hundred and twenty-three $\frac{55}{100}$ dollars, with interest thereon from the 1st day of January, 1866, till paid, and its costs by it about its suit in this behalf expended.

Execution on this judgment is stayed for ninety days, to allow defendants time to apply for a supersedeas.

[page 51] Memorandum.—On the trial of this cause, the defendants excepted to certain rulings, and tendered their bill of exceptions, which is signed, sealed, and enrolled, and made part of the record.

The following is a copy of the second bill of exceptions by

[page 52] defendant.

Second bill of exceptions of defendant.

[page 53] BANK OF THE OLD DOMINION
vs.
JA'S H. MCVEIGH, SON, AND OTHERS.

Be it remembered, that on the trial of this cause, the plaintiff, to maintain the issues on its part, gave in evidence to the jury seven promissory negotiable notes, drawn by James H. McVeigh & Son, and indorsed by *by* W'm N. McVeigh, which said notes are in the following words and figures, to wit: (See copies of these notes in former portion of this record.) Also, the notarial certificates of protest on the said seven notes in the following words and figures, to wit: (See copies of these certificates in former part of this record.) The plaintiff then proved that James H. McVeigh and W'm N. McVeigh were, on the 30th day of May, 1861, residents of the city of Alexandria; that after the federal forces occupied the city of Alexandria, on the 24th of May, 1861, the said James H. and W'm N. McVeigh, on the 30th of May, 1861, left their residences in the city of Alexandria, and went in the Confederate lines, where their families were on a visit; that said W'm N. McVeigh left at his residence in Alexandria a white servant and all his fur-
[page 54] niture, and left also his books and papers at the banking-house of the Bank of the Old Dominion, of which bank he was president; that W'm N. McVeigh did not resign his office; did not formally notify the directors of his intended absence; that the officers of said bank, however, knew that said W'm N. McVeigh had left Alexandria, and whilst within the Confederate lines was, in 1862, re-elected president of said bank; that Robert Crupper was the confidential clerk and attorney of James H. McVeigh & Son, and that the power from them to said Crupper, authorizing him to draw and indorse notes and checks in their absence, was deposited in the Bank of the Old
37 Dominion; that W'm N. McVeigh knew of Crupper's agency; he had been, prior to the war, in the habit of intrusting his signature in blank with James H. McVeigh & Son, and that he had left said blanks with said McVeigh & Son, and that the same were left by McVeigh & Son into the hands of Rob't Crupper when McVeigh & Son left Alexandria; that W'm N. McVeigh, just before leaving Alexandria,
[page 55] in May, 1861, requested Robert Crupper to take care of his property, meaning thereby his real estate; that in June, 1863, the said Rob't Crupper, claiming to act as the agent of W'm N. McVeigh, with the bank-book of W'm N. McVeigh in his possession, went to W. H. Lambert, the cashier of the Bank of the Old Dominion, and demanded of him four notes of W'm Cogan, each for $500, which had been, prior to the war, deposited with said bank by W'm N. McVeigh for collection, and entered on his said bank-book; that said plaintiff had previously refused to accept payment of said notes from W'm Cogon in Virginia currency, because he was not authorized by M'r McVeigh to do so, and because a rule of the bank prohibited receiving such money in payment of notes deposited for collection, but told said Crupper, in the presence of said Cogan, that plaintiff would receive said money in payment of debts due the plaintiff by M'r McVeigh; that said Lambert then delivered the notes given by Cogan to said Crupper, taking his receipt therefor, which said receipt is in the following words
[page 56] and figures, to wit:

ALEXANDRIA, *June 10th*, 1863.

Received of the Bank of the Old Dominion, the following notes deposited by W'm N. McVeigh for collection:

W'm Cogan's note,	18	months,	April	14,	1860	$500
do do	24	"	"	"		$500
do do	30	"	"	"		$500
do do	36	"	"	"		$500

all bearing interest from date.

ROBERT CRUPPER, *Ag't.*

That said Crupper collected said notes of Cogan in Virginia currency, and the plaintiff accepted the same of Crupper, and applied the amount, to wit, $2,379, by direction of said Crupper, to the note sued on, bearing date the 17th day of June, 1861; that the firm of C. A. Baldwin & Co., composed of C. A. Baldwin and W'm N. McVeigh, drew a check in the city of Richmond on the 29th day of January, 1863, on the plaintiff in favor of Maria L. Baldwin, the wife of C. A. Baldwin, which said check is in the following words and figures, to wit:

[Rev. stamp.]

JANUARY 29, 1863.

Cashier Bank Old Dominion, pay to the order of M'r's Maria
page 57] L. Baldwin, any money she may call for, taking receipt for same, on the back of this check, and charge same to our account.

C. A. BALDWIN & CO.

38 (Endorsed:)

Received June 10th, 1863, of the Bank of the Old Dominion, eighteen hundred and fourteen 95 dollars, on account of the within check.

MARIA L. BALDWIN.

That said check was sent through the hostile lines, and M'r's Baldwin handed said check to Robert Crupper, who presented it to W. H. Lambert, the cashier; that M'r's Baldwin was requested to put her name on the check, and did so; but whether before or after the receipt was written thereon did not satisfactorily appear; that said Lambert, acting under the direction of Crupper, claiming to be the agent of William N. McVeigh, directed the balance due C. A. Baldwin & Co. from the plaintiff, to wit, $1,814.95, to be applied to the credit of the note sued on, dated the 17th of May, 1861; that said Crupper, at the time, had in his possession the bank-book of C. A. Baldwin & Co., and the said check, and that said Lambert thereupon made the entries in the bank-book in the following words and figures, to wit, "'63, June 10. By check, M. L. Baldwin, $1,814,95;" that the two notes, dated 17th of May, and 17th June, 1861, were made and discounted for the use and accommodation
of W'm N. McVeigh by the plaintiff, and the proceeds thereof
[page 58] were received to his own use; that M'r's Baldwin never received one cent on said check; that she did not in person direct Lambert to apply the balance due C. A. Baldwin & Co. to the payment of the note of J. H. McVeigh & Son, endorsed by William N. McVeigh; that upon her return to Richmond, she stated that she did not know what was done with the money; she had *had* put her name on the back of the check, but had received no money; that said check was cancelled, and the check and bank-book returned to Robert Crupper; that M'r's Baldwin, whilst in Alexandria, stopped several months with

Robert Crupper, as his guest, who, on her return to Richmond in July, 1863, accompanied her to Annapolis; that the receipt on said check, above the signature of Maria L. Baldwin, was made by and is in the handwriting of W'm H. Lambert; that said Crupper also collected of E. E Hough $200 rent due from him as tenant of W'm N. McVeigh, and took, also, from said Hough a note for $300, which was, after the close of the war, sent by James H. McVeigh to W'm N. McVeigh; that W'm N. McVeigh was the owner of a large real estate in the city of Alexandria, and was confiscated during the war,

[page 59] and that said Crupper was apprehensive that the balance due C. A. Baldwin & Co., and the Cogan notes might also be confiscated; that W'm H. Lambert stated that Rob't Crupper acted generally as the agent of William N. McVeigh, and assigned, as the acts of agency within his knowledge, the action of Crupper with the plaintiff in the matter of the Cogan notes, the check of C. A. Baldwin & Co., the payment of the notes endorsed by W'm N. McVeigh, the possession of W'm N. McVeigh's bank-book, and his renting out one of his houses.

The defendants then proved that after the occupation of Alexandria in 1861, they left their homes in Alexandria as aforesaid, and that C. A. Baldwin & Co., whilst residing in Richmond, gave the check

39 above described to M'r's Baldwin to be carried through the lines, or sent it to her through the hostile lines; that after the close of the war the said W'm N. McVeigh wrote to the officers of the Bank of the Old Dominion for his papers and books which had been left at the bank when he left his home in 1861. Some time in 1865 the papers, including the bank-book and check, were forwarded to him in Richmond, but by whom it was not known or proved.

[page 60] There was also returned the receipt of Geo. H. Smoot, president pro tem. of the bank, in the following words and figures, to wit:

Received, Alexandria, June 10th, 1863, of J. H. McVeigh & Son, per Maria L. Baldwin, eighteen hundred and fourteen 95/100 dollars ($1,814.95), which sum is endorsed as a part payment of J. H. McVeigh & Son's note for twenty-five hundred dollars ($2,500), dated May 17, 1361, and endorsed by W'm N. McVeigh, due August 15–18, 1861, discounted and due to Bank of Old Dominion, and lying over under protest, as will appear per bank-book.

GEO. H. SMOOT,
Pres. pro tem.

That on the 30th day of May, 1864, James H. McVeigh & Son paid to the branch bank of the Bank of the Old Dominion, at Pearisburg, the full amount of the notes sued on, in Confederate currency, which was received by said branch. That at that date the average value of one dollar in gold compared with Confederate notes was from 18 to 21. That the said C. A. Baldwin & Co., upon the receipt of the said papers and book from the Bank of the Old Dominion on the 12th of February, 1866, addressed a communication to the bank in the following words and figures, to wit:

Letter of C. A. Baldwin & Co.

[page 61] RICHMOND, V'A, *Feb'y* 12, 1866.

M'r GEO. H. SMOOT, president Bank of the Old Dominion, Alexandria, V'a:

SIR: We hold statement of our account with Bank of the Old Dominion, showing a balance due of us of eighteen hundred and fifteen dollars

and five cents ($1,815.05). No part of that fund has ever been drawn with our authority, and we hold the bank responsible for same. The amount pretended to have been paid on check dated January 29th, 1863, to M'r's Maria L. Baldwin, of eighteen hundred and fourteen dollars and ninety-five cents, we repudiate as a fraudulent transaction.

Very respectfully, your ob't serv't,

C. A. BALDWIN & CO.

It was farther proved that the plaintiff, in the fall of 1865, sent commissioners to take possession of the assets of the branch bank at Pearisburg, which was done, and the plaintiff, on the 30th of June, 1866, published a statement in the words and figures following, to wit:

40 [page 62] Statement of the Bank of the Old Dominion and branch at Pearisburg, June 30, 1866.

Liabilities:	
Capital stock	$403,900 00
Due depositors	29,059 72
Dividends unpaid	327 25
Due banks	726 54
Special deposits in Confederate currency at branch	47,489 76
Contingent fund	20,260 00
Circulation	153,635 00
Profit and loss	73,252 54
	$728,650 81
Assets:	
Banking-house and other real estate	16,081 81
Property account, branch	271 81
Virginia State stock and guaranteed bonds	259,900 00
Chesapeake and Ohio Canal Company's bonds	86,000 00
Manassas Gap Railroad Company's bonds	20,000 00
Confederate bonds and notes at branch	106,807 66
Bills and notes discounted by branch in Confederate currency	43,064 55
Suspended debt	160,743 45
Due by banks	2,084 16
Due by banks and bankers in Confederate currency	32,600 85
State coupons	305 00
Corporation notes	128 00
Treasury notes	663 52
	$728,650 81

W'M H. LAMBERT, *Cashier.*

STATE OF VIRGINIA:

Alexandria County:

[page 63] W'm H. Lambert, cashier of the Bank of the Old Dominion, personally appeared before me, a justice of the peace for the county aforesaid, and made oath that the foregoing statement is correct, to the best of his knowledge and belief.

Given under my hand this 9th day of July, 1876.

P. G. UHLER, *J.P.*

It was also proved that J. H. McVeigh & Son were within the Confederate lines during the war, and that C. A. Baldwin and William N. McVeigh were at Richmond during the war, doing business there, and have so continued until the present time; that Crupper died in No-
41 vember, 1865; that W'm N. McVeigh was in Alexandria twice after the close of the war and before the death of Crupper, and saw Crupper on both occasions; that Crupper was an honorable and high-minded gentleman; that the earliest disaffirmance of the agency of Crupper by W'm N. McVeigh was the letter of C. A. Baldwin & Co., from Richmond, of Feb'y 12th, 1866; that the notes of the 8th and 17th of June, 1861, were renewals of notes given before the war.

And this being all the evidence, the plaintiff prayed the following instructions (see instructions in former part of record), the first, second, third, fourth, sixth, seventh, and tenth of which the [page 64] court granted; to which action of the court the defendants excepted, and the defendants then prayed for the following instructions. (See instructions in former part of record.)

The court gave the first and second instruction, but refused [page 65] the third. The fourth and fifth instructions were given with a modification.

4. If the jury shall believe from the evidence aforesaid that on and after the 7th day of June, 1861, the said James H. McVeigh and W'm N. McVeigh were residing within territory held in the firm occupation of the forces of the Confederate States, and so continued to reside until the close of the war, and that the said plaintiff had its domicil from said date and ever since in the city of Alexandria, held in the firm occupation of the forces of the United States during the war, then that the two notes sued on, one bearing date the 8th of June, 1861, and the other June 17th, 1861, are illegal and void, and they must, on these notes, find for the defendants, unless they also find that said notes were given in renewal of notes made before the war, and by an agent acting under authority conferred before the war.

5. If the jury shall believe from the evidence aforesaid that the said notes, bearing date respectively the 8th and 17th days of June, 1861, were made by the defendants whilst residing within the lines [page 66] occupied and firmly held by the forces of the Confederate States, and that said notes were discounted by the plaintiff whilst the said defendants were within the Confederate lines as aforesaid, and that the plaintiff was, at the time of the making and discounting of the said notes, located and doing business within the lines firmly held and occupied by the forces of the United States, then that said making and discounting were illegal and void, and not binding on the defendants, unless said notes were given in renewal of notes made and delivered before the war by an agent residing within the lines of the same belligerent with the plaintiff, and acting under an authority conferred before the war.

The court overruled the sixth, seventh, and eleventh instructions, and granted the eighth, ninth, tenth, and twelfth.

To which said several rulings of the court in granting the instructions prayed for the plaintiff, and overruling those asked for by the defendants, the defendants excepted.

42 The jury having returned a verdict in favor of the plaint-
[page 67] iffs in the words and figures following, to wit:

We, the jury, find for the plaintiff in the sum of twelve thousand

three hundred and twenty-three and $\frac{55}{100}$ dollars ($12,323.55), with interest from January 1, 1866.

DANIEL D. GOULD, *Foreman.*

The defendants moved the court for a new trial because the verdict was contrary to law and the evidence, but the court overruled said motion to set aside the verdict and grant a new trial; to which the defendants excepted, and said defendants prayed that their several exceptions heretofore made might be signed, sealed, and enrolled, which is accordingly done.

[SEAL.] E. M. LOWE,
Judge of the Corporation Court of the City of Alexandria.

Plaintiff's costs, $; defendants' costs, $.

A transcript of the record.
Teste:

MORTON MARYE, *Clerk.*

And at another day, to wit, at a supreme court of appeals held
43 at the State court-house, in the city of Richmond, on Wednesday, the 10th day of March, A. D. 1875.

This cause was partly heard upon the transcript of the record of the judgment aforesaid and the arguments of counsel, and continued until the morrow.

And at another day, to wit, Thursday, March 11, 1875, the cause was further heard upon the transcript of the record of the judgment aforesaid and the arguments of counsel, and continued until the morrow.

And at another day, to wit, Friday, March 12, 1875, this cause was further heard upon the transcript of the record of the judgment aforesaid and the arguments of counsel, and continued until the morrow.

And at another day, to wit, Saturday, March 13, 1875, this cause was this day fully heard upon the transcript of the record of the judgment aforesaid and the arguments of counsel, but because the court here was not then advised of its judgment to be given in the premises, time was taken to consider thereof.

And now at this day, to wit, Tuesday, November 30th, 1875 (being the first day and year herein written), came again the parties, by their
44 counsel, and the court, having maturely considered the transcript of the record of the judgment aforesaid and the arguments of counsel, is of opinion, for reasons stated in writing and filed with the record, that the judgment of the said corporation court is erroneous; and that whilst it did not err in refusing to give the fifth, eighth, ninth, and eleventh instructions, moved by the defendant in error, or in giving the first, second, fourth, fifth, eighth, ninth, and tenth instructions, moved by the plaintiffs in error, it did err in giving the second and third instructions, moved by the said defendant in error.

The court is further of opinion that the notices addressed to William N. McVeigh, delivered to his white servant, at his residence in Alexandria, and the notice delivered to Ramsey, at the Bank of the Old Dominion, under the facts and circumstances disclosed by the record, were insufficient in law, and that in order to bind the said William N. McVeigh as indorser, it was incumbent upon the defendant in error, within

a reasonable time after communication was restored between the parties by the termination of the war, to give the said indorser notice of the non-payment and dishonor of the notes in controversy, which were endorsed by him for the accommodation of the makers; and as to the other two notes, which do not appear to have been endorsed for the accommodation of the makers, there is no error in the fourth instruction given by the court for the defendant in error with regard to them;
45 and that for the foregoing reasons, which are more fully set forth in the opinion of the court filed with the record as aforesaid, the court erred in refusing the plaintiffs' in errors third instruction, and also in overruling their motion for a new trial.

Therefore it is considered that the judgment of the said corporation court be reversed and annulled, that the verdict of the jury be set aside, and a new trial granted the plaintiffs in error; and that the defendant in error pay to the plaintiffs in error their costs by them expended in the prosecution of their writ of supersedeas aforesaid here. And the cause is remanded to the said corporation court for further proceedings to be had therein, in conformity with the principles herein declared and in the opinion of the court filed with the record, which is ordered to be certified to the said corporation court of the city of Alexandria.

46 The reasons stated in writing, and filed with the record, are in these words and figures, to wit:

McVeigh, &c.,
v.
The Bank of the Old Dominion.

James H. McVeigh & Son, of the city of Alexandria, Virginia, were the makers of seven promissory notes, amounting together to $16,500, which were made payable at the Bank of the Old Dominion to W'm N. McVeigh, who was then also a citizen of Alexandria. The notes are as follows: one for $2,500, bearing date March 30, 1861; one for $1,200, bearing date April 20, 1861; one for $5,000, bearing date April 27, 1861; one for $800, bearing date May 11, 1861; one for $2,500, bearing date May 17, 1861; one for $2,000, bearing date June 8, 1861; and another for $2,500, bearing date June 17, 1861, each payable ninety days after date, and maturing in July, August, and September, 1861. The last two were renewal of notes, and one of which, and the one of date May 17th, are alleged to have been made and discounted for the accommodation of indorser. All the rest were made and discounted as accommodation notes for the benefit of the makers. It is alleged that each of them was duly presented at maturity, demand made and refused, & thereupon protested, and notice thereof given to the indorser.

And this suit was brought by the Bank of the Old Dominion in August, 1870, against the makers and endorsers, to recover the amount of said notes, with interest & charges of protest. Said notes were made and indorsed whilst the makers and indorser were residents of the city of Alexandria, before the beginning of the late war, or before the parties were separated by belligerent lines, except the two last. But before their maturity war was flagrant between the Northern States and
47 the State of Virginia, who had withdrawn from the Federal Union, and had united with the Confederate States. And long before the time when presentment and demand of payment is alleged to have been made and refused, and protest, and the alleged notice to the

indorser, the enemy had invaded and taken military occupation of said city, to wit, on the 24th of May, 1861, and James H. McVeigh and W'm N. McVeigh had left the city, to wit, on the 30th of May, and gone within the Confederate lines, with the knowledge of the officers of the bank (the family of the latter having preceded him), and neither of them had returned to Alexandria, but both remained within the Confederate lines during the war, W. N. McVeigh engaged in business in the city of Richmond, the capital of the Confederacy.

The record does not show the precise time when Edgar McVeigh, the son and partner of James H. McVeigh, left, whether before or after the departure of his father; but it is certified as a fact proved that James H. McVeigh and son were within the Confederate lines during the war.

Opinion.

The existence of war was recognized by the Government of the United States more than a month before the invasion and military occupation of Alexandria.

On the 19th of April, 1861, proclamation of the blockade was made by the President. This was of itself conclusive evidence that a state of war existed. The prize cases (2 Black, 635); Cuyler v. Ferrill (8 Amer. L. Reg., p. 105).

In Bigler v. Waller & al., a circuit court case (Amer. L. Times Rep., vol. 3, No. 9, p. 159), Chase, C. J., delivering the opinion of the court, said:

"The actual beginning of the war against the United States doubtless preceded the proclamation of the President of 15th of April,
48 1861, calling out the militia to suppress insurrection, but the proclamation declaring the blockade of the ports of the insurgent States must be regarded as the first formal recognition of the existence of civil war by the national government. That proclamation was issued on the 19th of April, and that date, therefore, must be taken as the date of the commencement of the war."

It would be needless, and a waste of time at this day, to argue that the late conflict between the American States was a war in the legal sense, with all the incidents and consequences of a war as they are known to the international law, since it has been so held repeatedly by the highest Federal and State courts. In Brown v. Hiatts (15 Wall., 184,) M'r Justice Field says, speaking of the late war:

"It is sufficient to state that the war was accompanied by the general incidents of a war between independent nations; that the inhabitants of the Confederate States, on the one hand, and the loyal States on the other, became thereby reciprocal enemies to each other and were liable to be so treated, without reference to their individual dispositions or opinions; that during its continuance all commercial intercourse and correspondence between them were interdicted by principles of public law, as well as by express enactments of Congress; that all contracts previously made between them were suspended," &c.

In Harden v. Boyce, Brady, J., said:

"The following cases establish the proposition that in the late rebellion, there existed between the Government of the United States and the Confederate States a state of civil war in the sense of the international law which brought with it the common incidents of war, and arrested all commercial intercourse and communication between the citizens of those States respectively."

49 He cites the prize cases (2 Black, 635); the Venice (2 Wall.,

258); the W'm Baglay (5 Wall., 376); Hanger v. Abbott (6 Wall., 532); Allen v. Russell (12 Amer. L. Reg., 362), to which may be added Bilgerry v. Branch & Son (19 Gratt., 425), and numerous other and more recent cases.

After the invasion of Alexandria & its subjugation by the United States, although it was a city of Virginia, and claimed by the State to the last, its status and that of the Bank of the Old Dominion and of all the inhabitants of the city, whatever might have been their individual dispositions or opinions, was that of hostility to the Confederacy and to the rest of Virginia which adhered to the Confederate Government and to the inhabitants thereof (Billgerry v. Branch & Sons, supra; Brown v. Hiatts, supra, M'r Justice Field), and the consequences and incidents of a war inter gentes applies to them. The foregoing propositions will hardly be controverted. With regard to them, we are all of one opinion. They being conceded, it is equally incontrovertible that the McVeighs having cast their fortunes with the Confederacy and thrown themselves under the protection of its government, to which they were giving aid and comfort, and living upon its territory whilst the Bank of the Old Dominion remained on the United States side of the belligerent lines, within the power and under the government and control of that belligerent, it would have been unlawful for the makers to pay, or for the bank to receive payment from them, of the notes in question at their maturity.

When the McVeighs abandoned their homes in Alexandria, after they had been overrun by the Northern power, & removed to keep within the Confederate military lines and under the Confederate flag, there
50 can be no question which side they had espoused, the North or the South, the United States or the Confederacy; to which government they felt that their allegiance was due; to which they were friends, and to which they were foes. It matters not whether they abandoned their residences in Alexandria with the intention of returning or not. They evidently had no intention of returning as long as the city remained in the occupancy and under the dominion of the Government of the United States waging war against their native State and the Confederacy. They were enemies to that government as long as it maintained the attitude of hostility and waged war against their country.

On the other hand, the Bank of the Old Dominion adhered to the Government of the United States. It remained on its side of the military lines, and continued subject to its power & control during the war, whilst the McVeighs, from the time they left Alexandria, as before stated, continued subject to the Government of the Confederacy as long as the war lasted. They were thenceforth, upon well-established principles of international law, enemies.

It was not lawful for the makers, whilst this relation subsisted, to pay the notes in question, or for the holder to receive payment from them. There is perhaps no principle of international law, in relation to wars inter gentes, better established than this. In Griswold v. Waddington (16 Johns., 438); Chanceller Kent says: "The idea that any remission of money may be lawfully made to an enemy is repugnant to the very rights of war. The law that forbids intercourse and trade must equally forbid remittances and payments. Payments or remittances of money by a subject or citizen of one belligerent to a subject or citizen of the other during the war is unlawful." See also Hoare v. Allen (2
51 Dallas, 102); Wilson v. Patterson, (7 Taunt., 438); Conn v. Penn (1 Peters, C. C., 496). This principle has been repeatedly applied

to our war. Life Ins. Co. v. Hall (7 Amer. L. Reg., 606); Coppell v. Hall (7 Wall., 557); Billgerry v. Branch & Sons (19 Gratt., 397).

This being established, I hold that it was not lawful for the holder to demand payment, or to cause the notes to be dishonored for non payment. It could not be lawful to demand of another what it is not lawful for him to pay or for you to receive. And the makers could not be held to be in default for not paying at maturity, when the law forbade them to make payment, and the holder to receive payment. In this I am sustained by this court in the case last cited. It follows that the protest was illegal and void.

Whilst demand of payment is not necessary where the place of payment is named in the instrument, to give the holder right of action against the maker of the note, it is necessary to give him right of action against the indorser and to fix his liability. The indorser, by his contract, only undertook to pay the note in case it was not paid by the maker, upon due presentment and demand and refusal, and upon due notice thereof to him. They are precedent conditions, and unless complied with by the holder, there is no contract or undertaking by the indorser to pay the note. Edwards on Bills and Promis. Notes, pp. 265, 268. The holder is required to do two distinct acts in order to charge the indorser. First, to make presentment and demand of payment of the maker; and if not paid, second, to give notice to the indorser of the dishonor of the note. Id., p. 483. In this case we have seen that it was unlawful for the makers to pay or the holder to receive payment,
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But if there had been a lawful demand on the makers and protest of the notes in question, has there been due notice of their dishonor, so as to make the conditional undertaking of the indorser absolute, and to fix his liability to pay them? It is true the protest states that notice was left at his residence in Alexandria with his white servant in all the cases except one, and in that one at the Bank of the Old Dominion, which is described as his place of business.

At the date of the first notice, the existence of the war had been formally recognized by the government at Washington more than two months, and at the date of the last it had been raging for nearly five months & a half, nearly as long as it took, in the late French & German war, to overthrow one of the most powerful empires in the world. And when these notices to McVeigh were left at his house, or the Bank of the Old Dominion in Alexandria, they, together with the whole c y had been in the military occupation of the enemy, and subject to its control and dominion, for thirty odd days to near five months, & had
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49 forms.

Deane v. Nelson & al., (10 Wall., 172,) was a proceeding in Memphis during the late war, whilst it was in the occupation of the United States, to foreclose a mortgage of shares of stocks which had been executed by Nelson to secure a debt of which Deane, a Northern citizen, was then assignee. A portion of the stock had been assigned by Nelson to Benjamin Day, and the residue to his wife, and they, with Nelson, were made defendants to the proceeding. All the defendants were then within the Confederate lines, and it was unlawful for them to cross them. Two of them had been expelled from the Union lines, and were not permitted to return. The other, Benjamin Day, had never left the Confederate lines. Held, that the notice was a nullity. M'r Justice Bradly, speaking for the court, said: "A notice directed to them and published in a newspaper was a mere idle form. They could not lawfully see it nor obey it. As to them the proceedings were wholly void and inoperative." How much better would have been a notice left at their residence or place of business in Memphis?

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The New York case of Harden v. Boyce (59 Barb. Sup'r Court R., p. 426) is still more directly in point. That was an action against the indorser of a negotiable note made in New York October 1st, 1860, and payable at the Bank of the Republic twelve months after date. The note, at maturity, in October, 1861, was presented at the Bank of the Republic, and payment demanded and refused, and thereupon protested. Notice of the dishonor of the note to the defendant, the indorser, who was a resident of Greenville, South Carolina, and within the Confederate lines, at the date of the protest, was deposited in the post-office, directed to him at his residence. It was held that the notice was a nullity. Brady, J., who delivered the opinion of the court, in a very clear and condensed opinion says:

"When a war is commenced between nations, it arrests, eo instanti, all commercial intercourse and voluntary communication with the enemy, without permission of the government, and the citizens or subjects of one belligerent become the enemies of the other, and of all its citizens or subjects." (Citing Griswold v. Waddington, 16 Johns., 438; The Rapid, 8 Cranch, 161, & The Julia, id., 193.) "And these results of war, inter gentes," he says, "were substantially applied to the citizens of the Confederate States during the late war." Then, referring to numerous cases sustaining this proposition, he thus concludes:

55 "The existence and character of the hostilities mentioned, & the consequences flowing therefrom, rendered the attempted service of notice of protest on the defendant a nullity. The defendant's engagement was a conditional one, to be made absolute upon the observance of such formulæ as are prescribed by law, unless waived or rendered unnecessary by facts and circumstances attending the maturity, demand & refusal of payment recognized by commercial law,

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In this case there was no pretence that notice of dishonor had been waived or was necessary (unnecessary), and the defendant was therefore entitled to it. The plaintiff was under no obligation to send it, as long as the impediment occasioned by war existed. * * * It was his duty, however, to send it when the interruption of intercourse ceased."

And such is declared to be the law by Chitty and Edwards. Edwards on Bills and Promiss. Notes, 458-9; see also 3 Wend., 488; 6 East., 16.

I think it must then be conceded, upon reason and authority, that the attempted service of notice on the indorser in this case was wholly inoperative and void, and that to fix his liability—in other words, to make absolute his conditional contract to pay the notes—it was necessary that the holder should have notified him of their dishonor in a reasonable time after the impedement was removed by the termination of the war.

This conclusion is irresistible, unless it can be successfully maintained that W'm N. McVeigh, by abandoning his residence and place of business in Alexandria to keep within the Confederate lines and under the protection of the Confederate Government, forfeited his right to notice and made his contracts absolute.

56 He violated no condition or requirement of his contracts, expressed or implied, by removing from his residence and place of business in Alexandria before the maturity of the notes, nor did the makers. If he (the indorser) chose to leave Alexandria and to remove to any part of Virginia, or to another State, or beyond the seas, he would thereby have violated no obligation of his contract; and it would have been necessary for the holder to have followed him with notice of the dishonor, in order to hold him liable, if he knew where he was, or could find out by reasonable inquiry or due diligence. (Story on Proms. Notes, § 316.) W'm N. McVeigh, like Benjamin Day, in Deane v. Nelson, supra, never left the Confederacy. He was in the Confederacy when the war commenced, at the place where the notes were made, indorsed, and payable, and, like Day, he never left it.

It was not leaving his home & place of business, which he had a right to do under his contract, which prevented its execution or caused its suspension. It was the war, for which he was not responsible, and which he doubtless regarded as a great public calamity. But as it burst upon the country it threw upon him, as it did upon others, the necessity of deciding questions of duty and responsibility for himself as a citizen. It was a war which divided States and communities and individuals that were before under the common federal government. But these individuals were also amenable to their local State governments, which still retained their powers of sovereignty, except only so far as they had delegated a part of them to the general government by the bond of union. To their respective State governments the citizens of each owed allegiance, qualified only by the powers which had been delegated

57 to the common government.

In this unhappy conflict between States and sections, the citizen had to decide for himself on which side of the conflict his duty placed him; and it being a civil war, and having been, previous to the removal of the McVeighs from Alexandria, recognized as such by the government at Washington, the citizen had the right of election to which side he would adhere. It was so held by the Supreme Court of the U. S. (Inglis vs. Trustees of the Sailor's Snug Harbor, 3 Peters, 99.) M'r Justice Thompson, delivering the opinion of the court, says: "This right of election must necessarily exist in all revolutions like ours, and is so well established by adjudged cases that it is entirely unnecessary

to enter into an examination of the authorities." M'r Justice Story, who dissented from the opinion of the court on some points, concurred on this point. He says: "Under the peculiar circumstances of the Revolution, the general, I do not say the universal, principle adopted was to consider all persons, whether native or inhabitants, upon the *occurence of the Revolution*, entitled to make *their choice* either to remain subjects of the British Crown or to become members of the United States." (The italics are mine.) Again, he says: "It appears to me that there is sound sense and public policy in the doctrine, and there is no pretense to say that it is incompatible with the known law or general usages of nations."

But the decision of this question is not necessary to the decision of this cause; for if, in a political aspect, the McVeighs had not the right of election, and were guilty of an offence against the public in electing to go with the Confederacy, for which they might be held responsible in a prosecution, they cannot by reason thereof be held liable to this private party beyond their undertaking in the contract.

It seems that McVeigh elected to adhere to his native State of Virginia, which had withdrawn from the Federal Union and united with the Southern Confederacy. And earnest, and deep, and overpowering must have been his convictions of duty, to have impelled him to so great a sacrifice of property, comfort, and material prosperity, as he made by this decision.

58 It is not like the case of a man absenting himself from his home or absconding to evade notice, or to avoid a just responsibility. W'm N. McVeigh, by leaving, sacrificed large pecuniary interests, and left a valuable estate at the mercy of the invader. It cannot be doubted that he was impelled to this great pecuniary sacrifice by a high sense of duty and moral feeling, like thousands of as generous, virtuous, honorable, and patriotic men as ever lived in any age or in any land—many of whose names, by their exalted virtues, will adorn the annals of time till time shall be no more. No one will be disposed to attribute ignoble motives to W'm N. McVeigh, or McVeigh & Son, whether they regard them as right or wrong in their convictions; a question which it is not necessary to decide, and which it would be futile and to no purpose to investigate in this opinion.

As McVeigh violated no requirement nor condition of his contract, to hold that he forfeited it to the bank by an infraction of a public duty would be tantamount to subjecting him to confiscation, not to the government, but to a private party to a contract which he had not violated; a conclusion which must be repulsive to every fair mind. If he were liable to this sort of punishment or forfeiture, how would it be with those confederates who did not recede before the advancing armies of the United States, but met them and invaded their territory?

I cannot see that the McVeighs differ from all other non-combatant confederates who were hostile to the United States as a power that was waging war against their State.

59 They did not leave their country to carry on hostilities against it; and, if they had, the public offence could not create an obligation on the part of W'm N. McVeigh to pay to a private party a debt which his contract did not bind him to pay. He did not leave his State. He elected to adhere to the Confederacy in the conflict of arms, and endeavored to keep within its military lines and under the protection of its flag. If he were wrong, it could not entitle a private party to coerce him to pay further than his contract bound him. Nor can we say that the McVeighs of their free will abandoned their homes in Alexandria. It cannot justly be said that a man voluntarily does that

which if he did not do, he would be in danger of loss of life or liberty from a power which it was impossible for him to resist, or be required to subject himself to moral degradation. Such the McVeighs most probably regarded the alternative presented to them; and, if so, though they were mistaken, it cannot be said that they voluntarily abandoned their homes.

But however W'm N. McVeigh's removal from Alexandria may be regarded as a political question, in that respect we have nothing to do with it. We have seen that by his removal he violated no part of his contract with the holder of the notes in question, and that, if guilty of an infraction of a public duty, that could not create in him a private obligation to pay money to the holder which by his contract he is not liable to pay. He is not asking aid of the courts to relieve him from the operation of legal proceedings, or from the effect of his absenting himself from his home, and in this there is a broad distinction between our case and Ludlow v. Ramsey.

I am further of opinion that the court erred in overruling the motion for a new trial, the verdict being plainly contrary to the law,
60 as herein expressed, and to the first and second instructions given by the court for the defendant. It is said that the McVeighs had not been domiciled in Virginia, outside of the Union lines, because they left their homes in Alexandria with the intention of returning. Let it be that they did; that they expected the enemy would be expelled and they would be able to return even before the maturity of their notes. They where grievously disappointed. They found that at the date of the maturity of these notes, and before and afterwards, as long as the war lasted, there was an impassable barrier between them and their former homes in Alexandria and the holder of those notes. But did we not hold in Hutchison v. Taylor (25 Gratt.), Judge Christian delivering the opinion, that Hutchison had changed his domicil and become domiciled in Virginia, although he may have left Washington with the intention of returning, and that he and his partner, Taylor, who remained in Washington, thereby became enemies, and upon that ground that the partnership was dissolved? One rule ought not to be applied to Hutchison and a different rule to McVeigh, under substantially the same circumstances. As well might it be held that Gen'l Lee had not changed his domicil, and that a notice left at Arlington, after it fell under the dominion of the enemy, as his place of residence, was a good service, as to hold that the notice was good in the case before us. He brought his family away; but suppose he left furniture, books, papers, and servants too, as I think he did, would that validate the notice? The grave question for this court to determine is the legal liability of W'm N. McVeigh under these contracts, as indorser; and if it were a fact that orphans
& widows would be affected by our decision, and I do not know
61 whether they will or not, I am at a loss to know what aid it can give us in coming to a right conclusion. If W'm N. McVeigh is not liable to pay them by his contract, as implied by his indorsation according to commercial law and usage, there is no obligation on him, moral or legal, to pay them, even though orphans and widows had an interest in them. He only undertook to pay them, as we have seen, on the compliance of the holder with certain precedent conditions, one of which was due notice of their dishonor, and inasmuch as the holder could not comply with that condition by reason of the war, the contract was suspended, and the holder was excused from giving the notice until the impediment was removed, which, in this case, was the termination of the war. In such case Chief Justice Marshall says, in Hopkirk v. Page (2

Brock. R., p. 34), "to charge the drawer, notice of the dishonor of his bill ought to be given within a reasonable time after the removal of the impediment." Notice to the endorser cannot be presumed, as has been contended, from the fact of payment to the branch bank, during the war, in Confederate money. The payment was made by the makers and accepted by the branch of the Bank of the Old Dominion on the 30th of May, 1864. The makers, of course, then knew that they had not been paid, and, if the fact of payment was communicated to the indorser, which is also probable, the inference for him was plain, that they had not been previously paid. But it is not fair to presume from that fact that he inferred or had reason to believe that they had been protested at maturity, when he knew that no demand of payment had been made or could have been made.

62 It was natural that the makers, knowing that the notes were not paid, would avail themselves of the authority given by the act of assembly in such cases to pay them, if they had the means to pay them, and the branch bank was willing to receive payment in such currency as all the other banks of the commonwealth were receiving.

No presumption can be raised from this fact in connection with the fact that subsequently said act of assembly was held to be unconstitutional by a majority of this court, so far as it authorized payments to be made in such cases to the branch bank, that the indorser knew, in a reasonable time after communication was restored by the termination of the war, or had any reason to believe, that said notes were unpaid and that the bank looked to him for payment. That decision was made more than five years after the termination of the war, and until then no judicial doubt had ever been suggested as to the constitutionality of the law or as to the validity of payments made by its authority; but it had received high judicial approval and sanction, as far as it had been passed on by the courts. No notice had been given to the indorser by the mother bank, within a reasonable time after the termination of the war, that she repudiated the payment made by the makers to her branch and looked to him for payment; but, on the contrary, as soon after the war as the fall of 1865 the mother bank appropriated all the assets of her branch, including the proceeds of the payment made by the makers of these notes, without even an offer, so far as this

63 record shows, to return to the makers the value of the Confederate money paid by them, or to credit it on their notes.

So far from these facts raising a presumption that the indorser had notice in a reasonable time after the termination of the war and the restoration of communication between him and the bank, that the notes in question had not been paid, that they had been dishonored, and that the bank looked to him for payment, the presumption is the other way. They raise a strong presumption, amounting, in fact, to an assurance, that the notes were discharged, and that the bank did not look to him for payment. Judge Marshall says, in Ogden v. Saunders (12 Wheat. R., 213–14), "he," meaning the drawer, "has a right to expect notice of its non-performance, because his conduct may be materially influenced by this failure of the drawee. He ought to have notice that his bill is disgraced, because this notice enables him to take measures for his own security." The same is applicable to the indorser of a note; and if W'm N. McVeigh had received due notice of the non-payment of the note, and that the bank looked to him for payment, he might have taken measures for his security.

But it is said it was the duty of the indorser to have made inquiry himself of the holder of the notes whether they had been paid, or

whether they had been dishonored and he was looked to for payment, and that inasmuch as he did not do so he is liable to pay. This, it seems to me, would introduce a new principle into the commercial law and totally change the character of an indorser's contract, as it
64 has already been explained. The fact that the indorser was the president of the bank cannot affect the question of his liability. He stands precisely upon the footing as to his rights & liabilities that he would if he were not president, and can be held liable no further than his contract makes him liable. Did we not hold but recently, in a case decided at Staunton and not yet reported, J. Christian delivering the opinion, in which we all concurred, the case of Tardy v. Boyd, that Boyd, as indorser, was discharged from liability to pay the debt for want of notice of its dishonor, although he was a director of the bank, and afterwards offered to pay it in Confederate money? But McVeigh, in fact, ceased to be president of the bank before any of these notes matured; was never afterwards privy to its proceedings, & was cut off from all communication with it.

With regard to the instructions, as this opinion has already occupied so much of our time, I will only say that so far as the instructions are in harmony with the principles herein declared they are proper to be given to the jury, and so far as they are in conflict with them they ought to be refused.

I am of opinion, upon the whole, to reverse the judgment of the court below, with costs, & and to remand the cause to be proceeded with in conformity with the principles herein declared.

65 And afterwards, to wit, Friday, December 10th, 1875, came again the defendant in error, by its counsel, and filed a petition for a rehearing of the judgment rendered herein on the 30th November, 1875, but the court not being then advised of its judgment to be given on said petition, time was taken to consider thereof.

And at another day, to wit, Thursday, December 16th, 1875, came again the parties by their counsel, and the court having then maturely considered the petition of the defendant in error, filed herein on the 10th inst., for a rehearing of the judgment rendered on the 30th November, 1875, and no one of the judges of this court who concurred in said judgment being dissatisfied with it, and desiring such rehearing, it was ordered that said petition be denied.

The petition above referred to is not copied in the record, because I find no copy of the same on file among the records of my office, it having been printed by the counsel for the defendant in error, and handed directly to the judges for their consideration.

GEO. L. CHRISTIAN, *C. C.*

STATE OF VIRGINIA,
City of Richmond, to wit:

I, George L. Christain, clerk of the supreme court of appeals of Virginia, do hereby certify that the foregoing is a true copy of the
66 record of the said court in the case of McVeighs vs. The Bank of the Old Dominion, lately pending and decided in the said court.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court at Richmond, this 4th day of January, A. D. 1878.

[SEAL.] GEO. L. CHRISTIAN, *C. C.*

67 VIRGINIA:

Pleas before the supreme court of appeals of Virginia, held at the

State court-house, in the city of Richmond, on Thursday, the 13th day of December, A. D. 1877.

Be it remembered that heretofore, to wit, on the 21st day of June, 1876, came the Bank of the Old Dominion, by its counsel, and filed its petition and record, upon which a writ of error and supersedeas had been awarded, to a judgment rendered by the corporation court of the city of Alexandria, on the 26th day of April, 1876, in a suit in which the petitioner was plaintiff, and James H. McVeigh and William N. McVeigh were defendants, which petition, and the record of said judgment accompanying the same, are in these words and figures, to wit:

68 In the supreme court of appeals of Virginia, Richmond.

BANK OF OLD DOMINION
vs.
MCVEIGH, &C.

To the honorable the judges of the supreme court of appeals of Virginia:

Your petitioner, the Bank of the Old Dominion, respectfully shows unto your honors that it is aggrieved by a final judgment of the corporation court for the city of Alexandria, rendered at the April term, 1876, of said court, in an action at law in which the petitioner is plaintiff and James H. McVeigh and William N. McVeigh are defendants.

The transcript of the record herewith exhibited shows that the Bank of the Old Dominion, in August, 1870, instituted an action of debt against James H. McVeigh and Edgar McVeigh, late copartners trading under the firm-name of James H. McVeigh & Son, makers, and William N. McVeigh, endorser, of seven protested negotiable notes.

The suit abated as to Edgar McVeigh, and upon the first trial the jury found the issues joined for the plaintiff, and the court entered up judgment in accordance with the verdict. The defendants moved for a new trial, which motion was overruled. To this ruling, as well as to the granting of certain instructions asked for by the plaintiff, and
69 refusing certain others prayed for by the defendants, the defendants excepted, and applied to this honorable court for a writ of error, which was granted.

At the hearing before this honorable court three of the judges were for reversing and two for affirming the judgment of the corporation court for the city of Alexandria, and accordingly the judgment was set aside and a new trial ordered to be proceeded with in conformity to the judgment of this honorable court and the views expressed in the opinion of the majority of the judges filed with the judgment.

On this new trial the plaintiff asked for fifteen instructions to the jury, only one of which the court gave. The defendants asked for one instruction, which the court granted.

The plaintiff excepted to the ruling of the court refusing the fourteen instructions asked for by the plaintiff, and also to the ruling of the court giving the instruction prayed for by the defendant.

The jury found for the plaintiff the whole amount sued for as against James H. McVeigh, and for the balance due upon two of the notes, which were discounted for the use of the endorser, against William N. McVeigh.

The plaintiff moved the court to set aside the verdict for misdirection, and also because it was contrary to the evidence, which motion the court overruled, and to this ruling the plaintiff excepted. The hon-

orable court is familiar with this case, and it is not necessary to elaborate either the law or the evidence in this petition.

The ground upon which this honorable court reversed the judgment of the court below was that the notices of the protest left at the residence and place of business of the endorser, William N. McVeigh, in the city of Alexandria, while he was within the Confederate lines and adhering to the Confederate Government, were insufficient to bind the endorser, and that in order to bind him it was necessary to give him notice of the dishonor and non-payment of the notes sued on within a reasonable time after the termination of the war.

The language of the judgment is as follows: The court is further of the opinion that the notices addressed to William N. McVeigh, delivered to his white servant at his residence in Alexandria, and the notice delivered to Ramsay, at the Bank of the Old Dominion, under the facts and circumstances disclosed by the record, were insufficient in law, and that in order to bind the said William N. McVeigh as endorser it was incumbent upon the defendant in error, within a reasonable time after communication was restored between the parties by the termination of the war, to give the said endorser notice of the non-payment and dishonor of the notes in controversy.

And to the same effect is the opinion of the court upon this point, which is expressed in the following language: "No notice had been given to the endorser by the mother bank within a reasonable time after the termination of the war that she repudiated the payment made by the makers to her branch and looked to him for payment."

70 These quotations show that the judgment of the court and the opinion of the court, in conformity with which the new trial was to be proceeded with, only required the plaintiff at that trial to prove that the endorser, William N. McVeigh, within a reasonable time after the termination of the war, had notice of the dishonor and non-payment of the notes in controversy.

The honorable judge of the corporation court seems to have understood the supreme court to have decided not only that the notices were insufficient, but that there was no dishonor, no lawful protest; and that it was the duty of the bank to have made demand and caused protest after the termination of the war. It is respectfully submitted that this view is not sustained by the judgment of the supreme court of appeals. It will be seen by reference to the transcript of the record that the plaintiff proved at the trial that on the 18th day of July, 1865, at a meeting of the stockholders of the Bank of the Old Dominion, in the proceedings of which the endorser, William N. McVeigh, participated, the said stockholders adopted a resolution repudiating the payment made at the Pearisburg branch in 1864, and authorizing proceedings against both makers and endorsers to recover the amount of said notes. The plaintiff then asked the court to instruct the jury to find for the plaintiff if they believed from the evidence that the notice given by that resolution was given in a reasonable time after the termination of the war. The court refused to give the instructions containing this proposition, upon the ground that there ought to have been demand, dishonor, and protest after the termination of the war. In other words, that, in accordance with the judgment of this honorable court, there never was any demand, dishonor, and protest of which the aforesaid resolution of the stockholders could be notice. It will be observed that the instructions prayed for by the plaintiff and refused by the court cover four propositions:

1. That there was dishonor and protest, and that the notices thereof

left at the residence and place of business of the endorser were sufficient to bind him.

2. That the plaintiff having acted upon the best information it had or could obtain, notices left at the residence of the endorser in Alexandria were sufficient, although at that time he had acquired a residence elsewhere.

3. That even if such notices were not sufficient, that the notice given by the resolution of the stockholders at their meeting on the 18th day of July, 1865, was given within a reasonable time after the termination of the war.

4. That although the late civil war was in some respects to be considered as a war inter gentes, this doctrine, in the very language of the court in the case of Billgery vs. Branch, by no means involves the recognition of the Confederate States as a political sovereignty. It involved no concession of political rights to the association of States
71 that carried on the conflict, and therefore that no citizen who voluntarily went within the Confederate lines can claim the protection which the existence of the war affords those who remained at home, and became belligerents from the fact that their homes were within the hostile lines.

Your petitioner does not deem it necessary to refer to authorities in support of the first branch of the first proposition, because the principle asserted therein does not appear to be involved in the judgment of this honorable court. It is not understood that the court decided that there was no dishonor and protest of the notes in controversy. Something to that effect is intimated in arguendo in that opinion, but the judgment does not seem to comprehend a decision upon that point. It is submitted that as the notes were made payable at the Bank of the Old Dominion, and were the property of the bank, that no demand was necessary in order to dishonor the notes. All the bank had to do was to examine the account of the makers with the bank, and if it was found that there was nothing to their credit which could be applied to the payment of the notes, this was a dishonor of them. (2 H. Blacks, 509; 6 Mass., 524; 12 Id., 404; 14 Id., 556; Bank of the United States vs. Smith, 11 Wheat., 171; Same vs. Carneal, 2 Peters, 542; Rahm vs. Philadelphia Bank, 1 Rawle, 335; Junks vs. Doglestown Bank, W. & S., 511.)

In addition to what has been stated on this point, it may be urged that as the makers left a confidential agent and attorney in fact in Alexandria, to whom the making, negotiating, and paying of their commercial paper had been committed, even while they themselves were in the city, certainly it would have been lawful for him to have paid the notes during their absence.

It is not deemed expedient to discuss the second branch of the first proposition, except in so far as it is analagous to the second proposition, to wit, that if the bank, acting bona fide and upon the best information it had or could obtain, believed that the dwelling of the endorser in Alexandria was his residence, then the notices left at that residence were sufficient, although the endorser had in fact at the time acquired a residence elsewhere, and the bank was afterwards correctly informed as to that residence. (2 Rob. Practice, new ed., pp. 176, 177, 191, 192, 193, 194, and 195; 1 Parsons on Notes and Bills, pp. 448, 463, 477, 487, 490, 522, 527, 528, 531, 532; Redfield & Bigelow's Leading Cases on Bills, &c., from page 404 to page 452; 9 Wheat., 598; 1 Peters, 578; 2 Id., 96; 21 Wend., 643; 2 Brock., 20; 48 Penn. State, 261; 3 Denio,

145; 24 N. Y., 28; 30 Id., 309; 9 Howard, 552; 2 Hump., 112; 17 Johns., 26; 1 Johns., 294; 10 Peters, 572.

72 In reference to both the first and second propositions it may be briefly stated:

1. That if the endorser had a residence in Alexandria when the notes were protested, that the notices left at the residence were sufficient to bind the endorser, although he was absent from home and never received the notices.

2. That if the plaintiff, acting upon the best information it could obtain, believed that the endorser's residence was in Alexandria, and left the notices at that residence, that such notices were sufficient, although Alexandria had ceased to be his residence; and the plaintiff was not bound to give further notice when correctly informed.

3. That if the endorser, after endorsing the notes and before their maturity, left Alexandria and went into another jurisdiction, the notices left at his former residence were sufficient to bind him.

The authorities cited above sustain all of these positions.

As to the third proposition—to wit, that the notice contained in the resolution adopted by the meeting of the stockholders of the bank in Alexandria, on the 18th day of July, 1865—it is deemed necessary only to suggest that one instruction asked by the plaintiff and refused by the court submitted the question of the reasonableness of the notice to the jury, while another instruction submitted that question to the court.

It is proper to remark, also, that one instruction referred to that notice as given after a suspension of hostilities, and another as given after the termination of the war.

It is deemed unnecessary to discuss these different aspects of the case. If the notice would have been good if given after the termination of the war, it would have been good if given before the termination of the war, if the endorser, after the suspension of hostilities, was lawfully in the city of Alexandria.

Conceding, then, for the sake of the argument, that the date of the suspension of hostilities was, for the purposes of this case, the termination of the war, was the notice given on the 18th day of July, 1865, given within a reasonable time after the termination of the war? A proper judgment upon this point involves a consideration of all the circumstances of the case, to which your honors' attention is respectfully asked.

The notes had been dishonored at maturity. The endorser knew that fact.

Payment of them had been made by the deposit of Confederate money at the branch in 1864.

The endorser knew that fact also, and approved of it, because that deposit included two notes of twenty-five hundred dollars each which had been discounted for his use, and which were his obligations, and not the obligations of the makers.

The bank had suspended operations during the war, and its
73 banking-house had been seized and occupied by the Federal authorities, and was so occupied by them until after the 18th day of July, 1865.

The restored government of Virginia moved from Alexandria to Richmond on the 23d day of May, 1865.

The meeting of the stockholders could only be held after thirty days' notice.

From the 23d day of May to the 18th day of July was only fifty-six days, and take from these the thirty days for publication of notice, and

it leaves only twenty-six days for putting in motion the disordered and disorganized machinery of the bank, the operations of which had been suspended by four years' of civil war raging between the stockholders and directors of the bank who were separated by the hostile lines.

Was this, under the circumstances, unreasonable delay? It is respectfully submitted that it was extraordinary diligence.

The bank, soon after this meeting of the stockholders, brought suit in a test case, in which the defence relied on was payment made in 1864. The honorable court is familiar with that case, reported in 20 Gratt.

The petitioner offered to read to the jury a report of the proceedings of the stockholders' meeting, published in the Alexandria Gazette, of July the 19th, as additional evidence of notice to the endorser. The defendants objected, and the court sustained the objection, to which ruling the plaintiff excepted.

The pertinency and importance of that evidence is too apparent to require an argument in favor of its admissibility.

The fourth proposition contained in the instructions refused by the court is of great interest and importance. It is not necessary for the purpose of establishing the principle enunciated in the instructions to rely upon the decisions of the Supreme Court of the United States in Ludlow vs. Ramsay and University vs. Finch. These authorities lay down a broader rule than is required in this case. It may well be argued that the Federal Government having conceded such belligerent rights to the Confederacy as to make it necessary to regard the conflict as a war inter gentes, so far as the conduct of the war was concerned, this concession suspended during the war the collection of debts owed by the adherents of one government to the adherents of the other.

And if this be so, as the debt, the principal, could not be collected, then the security, the mere incident, could not be enforced. I repeat that it is not necessary to rely upon the authorities referred to in order to maintain the principles enunciated in these instructions.

In these cases there was that done which the laws of war prohibited, to wit, the collection of a debt due from one belligerent to another. In this case, there is no violation of any law. In the authorities referred to it might be well argued that the notice to foreclose was insufficient, because the foreclosure itself was unlawful.

In this case if the protest was lawful, the notice of the ptotest could not be unlawful. These notices, then, were sufficient, according
74 to the commercial law and the laws of war. Was there any other fact or law in the case which invalidated them?

The absence of an endorser from his residence at the time the notes are protested would not protect him under ordinary circumstances, however lawful and praiseworthy that absence may have been. It is evident that the defence in this respect must involve the existence of some other fact than mere absence from home—a fact predicated upon the duty imposed upon the endorser by the existence of the war. There can be no question that the opinion of this honorable court, heretofore delivered in this case, would not have been delivered but for the fact that the State of Virginia passed the ordinance of secession. If Virginia had remained in the Union, and the endorser, William N. McVeigh, had gone to South Carolina, and adhered to the Confederacy, the courts of this State would never have decided that notices left at his residence in Alexandria were insufficient.

The ground, then, upon which the opinion is based is the validity of the ordinance of secession. The result of the war leaves Virginia one of the United States. Its courts are bound by the Constitution of the

United States, and the laws made in pursuance thereof. Virginia was in the United States when she passed the ordinance of secession. She is in the United States when her courts are called upon to adjudicate the validity of the ordinance of secession. According to the Constitution and laws of the United States, the decisions of the Supreme Court of the United States is the law of Virginia upon these questions. That court has decided that the secession ordinances were invalid and unconstitutional, and this being the case, the conclusion is inevitable that the existence of a void law, though mistaken to be valid and binding, can never impose duties upon one party, or relieve another from his legal obligations.

White vs. Hart, 13 Wall., 646; Sprott vs. U. S., 20 Id., 459; McQuiddy vs. Ware. Id., 14.

There is another aspect in which this case is respectfully presented. The decisions of the Supreme Court referred to go much further than it is necessary to go in this case. In those cases the question was not as to the sufficiency of the notice, but as to the right to collect the debt. It was as to whether or not the plaintiff could proceed to enforce an existing right. In this case the question is as to whether the plaintiff could do that which the law required him to do, in order to have a right of action to be enforced at the proper time.

The notice given in this case was not a notice of proceedings to change the right of property, or to subject property to a sale for the payment of a debt. In such a case the neglect to give a notice would have compromised no right, would have exposed to no danger of loss; but in this case the notice which was given was a necessary step to be taken in order to bind the endorser, so that at the proper time he might be held liable. In the case of notice of legal proceedings, there was no time during the existence of the war at which the plaintiff was
75 obliged to proceed. In such cases, then, there could be no forfeiture of right by delay. But in this case there was a necessity for giving notice at a certain time. Failure to give the notice then might have been a forfeiture of the right to proceed against the endorser. As an illustration, suppose the bank had neglected to give the notice on the day of protest, and the next day William N. McVeigh had returned to his home, claiming that he had only been temporarily absent, would not notice given then have been too late? Can it be possible that the law, any law, can be so construed as to have the effect of requiring a holder of a negotiable note to know the purposes, intentions, and future actions of endorsers, and to hold him responsible for a mistaken judgment in reference thereto?

One word in reference to the instruction bearing upon the official relations of William N. McVeigh to the plaintiff. He was president by virtue of an election before the war. He remained president after the termination of hostilities. He regarded himself as president. The bank so regarded him. He, as president, not only could have lawfully acted within the Confederate lines, but he did actually so discharge the duties of president. On the 23d day of May, 1865, he tendered to the board of directors, who were, like himself, holding over, his resignation in writing, which was not accepted.

Notice of non-payment and dishonor was not then necessary, because all the parties knew that the notes had been dishonored in 1861, and the makers and endorsers, acting upon such knowledge, had paid them in Confederate money in 1864. Five thousand dollars of the notes were the obligations of the endorser, and he had attempted to pay them by depositing that amount at the branch bank in the name of the makers.

Now, was anything more required than that the bank should repudiate that pretended payment?

When it is remembered that the by-laws of the bank required the president to supervise and diligently to attend to all of the business of the bank, it will be apparent that his case is very different from that of a director, upon whom no such duty is devolved. It was the duty of the president to see that notices of protest were given to endorsers. It is not the duty of a director. If, according to the opinion of this honorable court, no notice of dishonor could have been given during the war—and acts done by the endorser during the war show that he had notice of dishonor, and of pretended payment made during the war—could it have been necessary after the war to give notice of these facts?

In 1865 the plaintiff knew that the makers and endorser had acknowledged that they knew of dishonor in 1861, and claimed that, acting upon that knowledge, the notes had been paid in 1864. Was it necessary for the bank to give notice of a fact upon which they made the payment in 1864, and which payment they claimed was a satisfaction of the notes?

If the payment was not valid, that was an end of it. It was the
76 duty of the president to know that he was held liable as endorser.

But the bank did more than it was necessary for it to do. It notified him by a solemn resolution, adopted while he was present, that it repudiated the pretended payment and held him liable as endorser. What more could the bank have done that would not have been "mere idle form"?

The question of sufficiency of notice did not arise in Bilgery & Branch. The bill in that case was absolutely void, and, of course, could not support a valid demand and protest.

It is deemed only necessary, in addition to what has been submitted, to call your honor's attention to the facts proven on the second trial, which were not in evidence at the first, and these may be stated as follows:

1. That William N. McVeigh, as endorser and president, knew of the dishonor of the notes at maturity in 1861, and of their pretended payment in 1864.

2. That he left Alexandria to join his family, who were spending the summer at the residence of a relative, who lived upon a farm belonging to the Ja's H. and W. W. McVeigh.

3. That he remained at that place until after the notes sued on had been dishonored; and it was not until after such dishonor that he gave up his purpose to return to Alexandria and went to Richmond.

4. That as late as 1862, he claimed Alexandria as his residence, and voted for a delegate to represent the county of Alexandria in the house of delegates.

5. That the by-laws of the bank required the president to supervise and diligently to attend to all of the business of the bank.

6. That during the war he did consider himself the president of the bank, did act as such, and did not tender his resignation as president until the 23d day of May, 1865, when it was not accepted, because of the disorganized condition of the management of the bank.

7. That as soon as possible after the suspension of hostilities, notice was given for the holding of a stockholders' meeting, in the proceedings of which meeting William N. McVeigh participated very conspicuously, and that at that meeting a resolution was adopted repudiating the payments made at the branch in 1864, and notifying the makers and endorser of the notes attempted to be paid at the bank that they were held liable for the payment of them. These new facts, it is submitted,

make up a case so different from that which was presented by the record in the former case, that it is scarcely necessary to consider the federal question raised in this record.

Your petitioner therefore prays that your honors will award a writ of error to the judgment of the corporation court for the city of Alexandria herein complained of.

THE BANK OF THE OLD DOMINION,
By its counsel, H. O. CLAUGHTON.

77 I, Hierome O. Claughton, an attorney practicing in the supreme court of appeals of Virginia, certify that I am of the opinion that the judgment complained of in the foregoing petition is erroneous, and should be reversed.

H. O. CLAUGHTON.

To the clerk of the supreme court of appeals at Richmond:

Writ of error and supersedeas awarded. Bond required in the penalty of $200, con'itioned as the law directs.

JOS. CHRISTIAN.

JUNE 21ST, 1876.

VIRGINIA:

THE BANK OF THE OLD DOMINION
vs.
J. H. MCVEIGH AND SON ET AL. } In debt.

Pleas, at the court-house of the city of Alexandria, in the corporation court of said city, on the 26th day of April, 1876.

Summons sued on.

Be it remembered that heretofore, to wit, on the 18th day of August, 1870, came the Bank of the Old Dominion, by its attorney, and sued out of the clerk's office of the said corporation court a summons against James H. McVeigh and Edgar McVeigh, late copartners, trading under the firm-name of J. H. McVeigh & Son, and William N. McVeigh; which summons, with the endorsements and return thereon made, is in the words and figures following, to wit:

Summons.

The commonwealth of Virginia to the sergeant of the city of Alexandria, greeting:

We command you to summon James H. McVeigh and Edgar McVeigh, late copartners, trading under the firm-name of J. H. McVeigh
78 & Son, and William N. McVeigh, if they be found within your bailiwick, to appear at the clerk's office of our corporation
[page 2] court for our said city of Alexandria, at the rules to be holden for said court, on the first Monday in September, 1870, next to answer the Bank of the Old Dominion of a plea of debt on seven protested negotiable notes. Debt, sixteen thousand five hundred dollars; cost of protests, seventeen dollars and fifty cents; interest on $2,502.50 from July 1st, 1861; on $1,202.50 from July 22, 1861; on $5,002.50 from July 26, 1861; on $802.50 from August 9th, 1861; on

$2,502.50 from August 15th, 1861; on $2,002.50 from September 6th, 1861; and on $2,502.50 from September 15th, 1861, till paid. Damages, $1,500. And have then there this writ.

Witness Morton Marye, clerk of our said court, at the court-house aforesaid, this 18th day of August, 1870, and in the 95th year of this commonwealth.

MORTON MARYE, *Clerk.*

Sergeant's return on above.

Executed as to James H. McVeigh, who was not found at his usual place of abode, by delivering at his dwelling-house a true copy of the within summons to Miss Tebbs, who resides at the said dwell-
[page 3] ing, and who is over the age of sixteen years, and explaining the purport of the same. As to Edgar H. McVeigh, he is not an inhabitant of my bailiwick.

J. T. WARD, *D. S.*,
For J. M. STUART,
City Sergeant.

Sept. 1, 1870.

Summons.

The Commonwealth of Virginia to the sergeant of the city of Richmond, greeting:

We command you to summon James H. McVeigh and Edgar McVeigh, late copartners, trading under the firm-name of J. H. McVeigh & Son, and William N. McVeigh, if they be found within your bailiwick, to appear at the clerk's office of our corporation court for our said city of Alexandria, at the rules to be holden for said court, on the first Monday in September, 1870, next, to answer the Bank of the Old Dominion of a plea of debt on seven protested negotiable notes. Debt, sixteen thousand five hundred dollars; cost protest, seventeen dollars and fifty cents; interest on $2,502.50 from July 1, 1861; on
79 $1,202.50 from July 22d, 1861; on $5,002.50 from July 26, 1861; on $802.50 from August 9, 1861; on $2,502.50 from August 15,
[page 4] 1861; on $2,002.50 from September 6, 1861; and on $2,502.50 from September 15, 1861, till paid. Damage, $1,500. And have then and there this writ.

Witness Morton Marye, clerk of our said court, at the court-house aforesaid, this 18th day of August, 1870, and in the 95th year of this Commonwealth.

MORTON MARYE, *Clerk.*

Sergeant's return.

Executed August 26, 1870, by delivering a true copy of the within summons to W. N. McVeigh. The others not found; do not reside in my bailiwick.

BENJ. T. AUGUST, *D. S.*,
For T. U. DUDLEY,
Sergeant City Richmond.

And at another day, to wit, at rules held in the clerk's office of said corporation court, on the first Monday in September, 1870, came the plaintiff, by its attorney, and filed its declaration against the defendants; which declaration is in the words and figures following, to wit:

[page 5] *Declaration.*

In the corporation court for the city of Alexandria, September rules, 1870.

THE CITY OF ALEXANDRIA, *to wit:*

The Bank of the Old Dominion complains of James H. McVeigh and Edgar McVeigh, late copartners, trading under the firm name of James H. McVeigh and William N. McVeigh, who have been duly summoned, &c., of a plea, that they render unto the plaintiff sixteen thousand five hundred dollars principal and $17.50, the charges of protest of notes hereinafter mentioned, with interest on $2,502.50, part thereof from the first day of July, 1861; on $1,202.50, another part thereof, from the 22d day of July, 1861; on $5,002.50, another part thereof, from the
80 26th day of July, 1861; on $802.50, another part thereof, from the 9th day of August, 1861; on $2,502.50, another part thereof, from the 15th day of August, 1861; on $2,002.50, another part thereof, from the 6th day of September, 1861; and on $2,502.50, the residue thereof, from the 15th day of September, 1861, which they owe to and unjustly detain from the said plaintiff.

And thereupon the plaintiff says that heretofore, to wit, on the 30th day of March, 1861, the said James H. McVeigh and Edgar McVeigh, by their firm-name of J. H. McVeigh & Son, made and signed
[page 6] a note, bearing date the day last mentioned, by which they promised to pay, ninety days after the date thereof, to the order of the said William N. McVeigh, twenty-five hundred dollars, at Bank of Old Dominion, value received; and after the said note was made, and before it became payable, the said William N. McVeigh endorsed the said note to the plaintiff.

And the plaintiff avers that afterwards, when the said note became payable, according to the tenor and effect thereof, to wit, on the first day of July, 1861, the said note was duly presented at the Bank of the Old Dominion for payment thereof, and payment of the sum of money therein specified was then and there duly required; and the payment so required was not made, but was wholly refused; and thereupon the said note was duly protested for non-payment, to wit, on the first day of July, 1861, the charges of which protest amount to $2.50, of all of which premises, and especially the said protest, the said William N. McVeigh had due notice.

And further, the plaintiff says that heretofore, to wit, on the 20th day of April, 1861, the said James H. McVeigh and Edgar
[page 7] McVeigh, by the firm-name of J. H. McVeigh & Son, made and signed a certain other note, bearing date the day last mentioned, by which they promised to pay, ninety days after the date thereof, to the order of the said William N. McVeigh, twelve hundred dollars, at Bank Old Dominion, value received; and after the said note was made, and before it became payable, the said William N. McVeigh endorsed the said note to the plaintiff.

And the plaintiff avers that afterwards, when the said note became payable, according to the tenor and effect thereof, to wit, on the 22d day of July, 1861, the said note was duly presented at the Bank of the Old Dominion for payment thereof, and payment of the sum of money therein specified was then and there duly required; and the payment so required was not made, but was wholly refused; and thereupon the said note was duly protested for non-payment, to wit, on the 22d day of July, 1861, the charges of which protest amount to $2.50, of all of which

premises, and especially the said protest, the said William N. McVeigh had due notice.

And further, the plaintiff says that h retofore, to wit, on the
[page 8] 27th day of April, 1861, the said James H. McVeigh and Edgar McVeigh, by their firm-name of J. H. McVeigh & Son, made a certain other note, bearing date the last mentioned, by which they promised to pay, ninety days after the date thereof, to the order
81 of the said William N. McVeigh, five thousand dollars, at Bank Old Dominion, value received; and after the said note was made, and before it became payable, the said William N. McVeigh endorsed the said note to the plaintiff.

And the plaintiff avers that afterwards, when the said note became payable, according to the tenor and effect thereof, to wit, on the 29th day of July, 1861, the said note was duly presented at the Bank of the Old Dominion for payment thereof, and payment of the sum of money therein specified was then and there duly required; and the payment so required was not made, but was wholly refused; and thereupon the said note was duly protested for non-payment, to wit, on the 29th day of July, 1861, the charges of which protest amount to $2.50, of all of which premises, and especially the said protest, the said William N. McVeigh had due notice.

[page 9] And, further, the plaintiff says that heretofore, to wit, on the 11th day of May, 1861, the said James H. McVeigh and Edgar McVeigh, by their firm-name of J. H. McVeigh & Son, made and signed a certain other note, bearing date the day last mentioned, by which they promised to pay, ninety days after the date thereof, to the order of the said William N. McVeigh, eight hundred dollars, at Bank Old Dominion, value received; and after the said note was made, and before it became payable, the said William N. McVeigh endorsed the said note to the plaintiff.

And the plaintiff avers that afterwards, when the said note became payable, according to the tenor and effect thereof, to wit, on the 12th day of August, 1861, the said note was duly presented at the Bank of the Old Dominion for payment thereof, and payment of the sum of money therein specified was then and there duly required; and the payment so required was not made, but was wholly refused; and thereupon the said note was duly protested for non-payment, to wit, on
[page 10] the 12th day of *day* August, 1861, the charges of which protest amount to $2.50, of all of which premises, and especially the said protest, the said William N. McVeigh had due notice.

And, further, the plaintiff says that heretofore, to wit, on the 17th day of May, 1861, the said James H. McVeigh and Edgar McVeigh, by their firm-name of J. H. McVeigh & Son, made and signed a certain other note, bearing date on the day last mentioned, by which they promised to pay, ninety days after date thereof, to the order of the said William N. McVeigh, twenty-five hundred dollars, value received, negotiable and payable at the Bank of the Old Dominion; and after the said note was made, and before it became payable, the said William N. McVeigh endorsed the said note to the plaintiff.

And the plaintiff avers that afterwards, when the said note became payable, according to the tenor and effect thereof, to wit, on the 17th day of August, 1861, the said note was duly presented at the Bank of the Old Dominion for payment thereof, and payment of the sum of money therein specified was then and there duly required; and the pay-
82 ment so required was not made, but was wholly refused; and thereupon the said note was duly protested for non-payment,

[page 11] to wit, on the 17th day of August, 1861, the charges of which protest amount to $2.50, of all of which premises, and especially the said protest, the said William N. McVeigh had due notice.

And, further, the plaintiff says that heretofore, to wit, on the 8th day of June, 1861, the said James H. McVeigh and Edgar McVeigh, by their firm-name of J. H. McVeigh & Son, made and signed a certain other note, bearing date the day last mentioned, by which they promised to pay, ninety days after the date thereof, to the order of the said William N. McVeigh, two thousand dollars at Bank Old Dominion, value received; and after the said note was made, and before it became payable, the said William N. McVeigh endorsed the said note to the plaintiff. And the plaintiff avers that afterwards, when the said note become payable, according to the tenor and effect thereof, to wit, on the 9th day of September, 1861, the said note was duly presented at the Bank of the Old Dominion for payment thereof, and payment of the sum of money therein specified was then and there duly required; and the payment

[page 12] so required was not made, but was wholly refused; and thereupon the said note was duly protested for non-payment, to wit, on the 9th day of September, 1861, the charges of which protest amount $2.50, of all of which premises, and especially the said protest, the said William N. McVeigh had due notice.

And, further, the plaintiff says that heretofore, to wit, on the 17th day of June, 1861, the said *the said* James H. McVeigh and Edgar McVeigh, by their firm-name of James H. McVeigh & Son, made and signed a certain other note, bearing date the day last mentioned, by which they promised to pay, ninety days after the date thereof, to the order of the said William N. McVeigh, twenty-five hundred dollars at Bank Old Dominion, value received; and after the said note was made, and before it became payable, the said William N. McVeigh endorsed the said note to the plaintiff.

And the plaintiff avers that afterwards, when the said note became payable, according to the tenor and effect thereof, to wit, on the 18th day of September, 1861, the said note was duly presented at the Bank of the Old Dominion for payment thereof, and payment of the

[page 13] sum of money therein specified was then and there duly required; and the payment so required was not made, but was wholly refused; and thereupon the said note was duly protested for non-payment, to wit, on the 18th day of September, 1861, the charges of which protest amount to $2.50, of all of which premises, and especially the said protest, the said William N. McVeigh had due notice; which seven sums make up the sum above demanded, and which costs of protest make up the amount of $17.50, above demanded for costs of protests; by virtue whereof the said James H. McVeigh and Edgar McVeigh, late copartners, under the firm-name of J. H. McVeigh & Son, and William N. McVeigh, are liable to the plaintiff, and there is right of

83 action for the plaintiff against them for the principal, charges of protest, and interest above demanded, and the same and every part thereof remains unpaid, though the same has long since been due, and the said defendants have been often requested to pay the same, but have refused so to do, and still refuse, to the damage of the plaintiff $15,000; and therefore he sues.

CLAUGHTON, *P. Q.*

[page 14] *Conditional judgment.*

Whereupon the defendants, James H. McVeigh and William N. McVeigh, having been duly summoned, and not appearing, on the motion

of the plaintiff, by its attorney, it was ordered that judgment be entered for the plaintiff against the said defendants, James H. McVeigh and William N. McVeigh, for the debt, interest, and charges of protest in the declaration mentioned, and also for the damages which the plaintiff had sustained by occasion of the detention of the said debt, unless the defendants should appear and plead to issue at the then next rules; and this cause was continued for service as to defendant Edgar McVeigh to the then next rules.

Conditional judgment confirmed.

At which day, to wit, at rules held in the clerk's office of the said corporation court, on the first Monday in October, 1870, the said defendants, James H. McVeigh and William N. McVeigh, still failing to appears on the motion of the plaintiff, by its counsel, it was ordered that the last order made against them in this cause be confirmed; and this cause was continued for service as to defendant Edgar McVeigh to
[page 15] the then next rules.

Plea nil debet.

And at another day, to wit, at a corporation court held for the city of Alexandria, at the court-house of said city, on the 10th day of October. 1870, this cause being docketed as to J. H. McVeigh & Son and another, this day came the parties by their attorneys, and the defendants say they owe nothing of the debt in the declaration mentioned, in manner and form as the plaintiff against them had complained; and of
84 this they put themselves upon the country, and the plaintiff likewise.

Leave was given to the defendants to plead specially; and the trial of this issue was continued till the next term.

At which day, to wit, at a corporation court held for said city, at the court-house aforesaid, on the 20th day of January, 1871, the trial of this issue was continued to the then next term.

And at another day, to wit, at rules held in the clerk's office aforesaid, on the first Monday in March, 1871, to which this cause
[page 16] had been regularly continued at each rules for service as to the def't Edgar McVeigh, on motion of the plaintiff, by its attorney, this suit is ordered to abate as to the said defendant, Edgar McVeigh.

Plea of payment.

And at another day, to wit, at a corporation court continued and held for the city of Alexandria, at the court-house of said city, on the 18th day of July, 1871.

This day came the parties, by their attorneys, and the defendants say that they have well and truly paid the debt in the declaration mentioned; and of this they put themselves upon the country, and the plaintiff likewise.

And at another day, to wit, at a corporation court of the city of Alexandria, continued and held at the court-house of said city, on the 18th

day of April, 1876, to which day this cause, having been reinstated on the docket for a new trial, in obedience to a mandate of the supreme court of appeals of Virginia, had been regularly continued.

This day came the parties, by their attorneys, and there,
[page 17] upon came a jury, to wit: R. M. Lawson, John Harlow Michael Smith, James Eveleth, W'm C. Richards, John Donelly, Samuel Smyth, Owen Nusent, James C. Nevett, W'm G.
85 Simpson, John Arnold, and W'm F. Vincent, who were sworn the truth of and upon the premises to speak, and having heard a part of the evidence, by consent of parties and with the assent of the court, were adjourned till to-morrow morning, 11 o'clock.

At which day, to wit, at a corporation court continued and held for the city of Alexandria, at the court-house of said city, on the 19th day of April, 1876:

This day came the parties, by their attorneys, and the jury sworn on yesterday to try the issue in this cause appeared in court, pursuant to their adjournment, and after hearing further evidence, by consent of parties and with the assent of the court, were adjourned till to-morrow morning, 10 o'clock.

[page 18] At which day, to wit, at a corporation court of the city of Alexandria, continued and held at the court-house of said city, on the 20th day of April, 1876:

This day came the parties, by their attorneys, and the jury heretofore sworn to try the issue in this cause appeared in pursuance to their adjournment, and having fully heard the evidence, upon their oath do say: "We, of the jury, find the issues joined for the plaintiff, and we find for the plaintiff, as to the defendant James H. McVeigh twelve thousand three hundred and twenty-three $\frac{55}{100}$ dollars ($12,323.55), and allow interest thereon from the 1st day of January, 1866; and we find for the plaintiff, as to the defendant William N. McVeigh eight hundred and six $\frac{5}{100}$ dollars ($806.5), and allow interest thereon from the 1st day of January, 1866;" and thereupon the plaintiff, by its attorney, moved the court to set aside the verdict and for a new trial, and time is taken to consider thereof.

And at another day, to wit, at a corporation court of the city
[page 19] of Alexandria, continued and held at the court-house of said city, on the 21st day of April, 1876:

This day came the parties, by their attorneys, and the motions made by the plaintiff to set aside the verdict of the jury and to grant it a new trial are overruled.

86 And now at this day, to wit, at a corporation court of the city of Alexandria, continued and held at the court-house of said city on the 26th day of April, 1876:

Judgment.

This day came the parties, by their attorneys, and the defendants, James H. McVeigh and W'm N. McNeigh, moved the court in arrest of judgment, and argument being heard thereon, the court doth overrule said motion; and it is considered by the court that the plaintiff recover against the defendant James H. McVeigh twelve thousand three hun-

dred and twenty-three $\frac{55}{100}$ dollars ($12,323$\frac{55}{100}$), with interest from the 1st day of January, 1866, till paid, and against the defendant William N. McVeigh eight hundred and six $\frac{5}{100}$ dollars (806\frac{5}{100}$),
[page 20] with interest thereon from the 1st day of January, 1866, till paid—debt—(the said sum of $806.05 so to be recovered against the defendant W'm N. McVeigh being a part of the said sum of $12,323.55 to be recovered against the defendant Ja's H. McVeigh); and also recover against said defendants Ja's H. and W'm N. McVeigh its costs by it about its suit in this behalf expended.

Memo.

Be it remembered that on the trial of this cause the plaintiff excepted to certain rulings of the court and tendered its three bills of exceptions, which it prayed might be signed, sealed, and enrolled, and the same was done accordingly, and the defendants excepted to certain rulings of the court and tendered their bill of exceptions, which they prayed might be signed, sealed, and enrolled, which was accordingly done.

Plaintiff's first bill of exceptions.

[page 21]

The plaintiff's first bill of exceptions is in the words and figures following:

BANK OLD DOMINION
vs.
MCVEIGHS.

On the trial of this cause be it remembered that, after the jury was sworn to try the issue joined, the plaintiffs, to maintain the issue on their part, read to the jury the notes and endorsements thereon and certificates of protest, as follows:

87 *Notes.*

$2,500.00.] ALEXANDRIA, 30*th March*, 1861.

Ninety days after date we promised to pay to the order of W'm N. McVeigh twenty-five hundred dollars, at Bank Old Dominion; value received.

J. H. McVEIGH & SON.

Credit drawer.

W. N. McV.

(Endorsed:) W. N. McVeigh.

Protest.

$2,500.00.] ALEXANDRIA, 30*th March*, 1861.

Ninety days after date we promise to pay to the order of W'm N. McVeigh twenty-five hundred dollars, at Bank Old Dominion; value received.

J. H. McVEIGH & SON.

Credit drawer.

W. N. McV.

[page 22] (Endorsed:) W. N. McVeigh.

STATE OF VIRGINIA,
Alexandria County, to wit:

Be it remembered that on the first day of July, in the year of our Lord one thousand eight hundred and sixty-one, at the request of the cashier of the Bank of the Old Dominion, at Alexandria, I, William C. Yeaton, notary public by lawful authority, duly commissioned and sworn, dwelling in Alexandria, in the county and State aforesaid, presented at the Bank of the Old Dominion, Alexandria, the original note, whereof the above is a true copy, and demanded of Ramsay, teller thereof, payment of the sum of money in the said note specified, whereunto he replied, "No funds."

Therefore I, the said notary, have protested, and do by these presents solemnly protest, against the drawer and endorser of the said note and all others whom it doth or may concern, for all costs, exchange, re-exchange, charges, damages, and interest suffered and to be suffered for the want of payment thereof.

And in the same day I delivered notice of protest, ad-
[page 23] dressed to W'm N. McVeigh, to G. W. D. Ramsay, at Bank
of the Old Dominion, the place of business of said W. N.
88 McVeigh—he reported out of town—informing them respectively
that the said endorsers were held liable for the payment of said note.

In testimony whereof I have hereunto set my hand and affixed my seal notarial on the day and year aforesaid.

[SEAL.] W. C. YEATON,
Notary Public.

Tax on seal, $1.50; cost of protest, 1.50—$2.50.

Note.

$1,200.00.] ALEXANDRIA, *20th April*, 1861.

Ninety days after date we promise to pay to the order of W'm N. McVeigh twelve hundred dollars at Bank Old Dominion, value received.

J. H. McVEIGH & SON.

Cr. drawer.

W. N. McV.

(Endorsed:) W. N. McVeigh.

Protest.

$1,200.00.] ALEXANDRIA, *20th April*, 1861.

Ninety days after date we promise to pay to the order of W'm N.
McVeigh twelve hundred dollars at Bank Old Dominion,
[page 24] value received.

J. H. McVEIGH & SON.

Cr. drawer.

W. N. McV.

(Endorsed:) W. N. McVeigh.

STATE OF VIRGINIA,
Alexandria County, to wit:

Be it known, that on the twenty-second day of July, in the year of

our Lord one thousand eight hundred and sixty-one, at the re-
89 quest of the cashier of the office of discount and deposit of the Old Dominion Bank at Alexandria, I, Robert J. Smith, a notary public, by lawful authority duly commissioned and sworn, dwelling in Alexandria, in the county and State aforesaid, presented at the Bank of the Old Dominion at Alexandria the original note whereof the above is a true copy, and demanded of P. E. Hoffman, cashier, payment of the sum of money in the said note specified, whereunto he replied, "There are no funds."

Therefore, I, the said notary, have protested, and do by these presents solemnly protest, against the drawers and endorser of the said note, and all others whom it doth or may concern, for all costs, exchange, re-exchange, charges, damages, and interest suffered and to be
[page 25] suffered for the want of payment thereof.

And in the same day I delivered notice of protest to W'm N. McVeigh by leaving it at his dwelling, in the hands of his white servant, informing him that he, the said endorser, was held liable for the payment of said note.

In testimony whereof I have hereunto set my hand and affixed my seal notarial on the day and year aforesaid.

[SEAL.] ROB'T J. SMITH,
Notary Public.

Tax on seal, $1.50; cost of protest, 1.00—$2.50.

Protest-book No. 5, page 8.

Note.

$5,000.00.] ALEXANDRIA, 27*th April*, 1861.

Ninety days after date we promised to pay to the order of W. N. McVeigh five thousand dollars at Bank Old Dominion, value received.

J. H. McVEIGH & SON.

Credit drawer.

W. N. McV.

(Endorsed:) W. N. McVeigh.

[page 26] *Protest.*

$5,000.00.] ALEXANDRIA, 27*th April*, 1861.

90 Ninety days after date we promise to pay to the order of W'm N. McVeigh five thousand dollars at Bank of Old Dominion, value received.

J. H. McVEIGH & SON.

Cr. drawer.

W. N. McV.

(Endorsed:) W. N. McVeigh.

STATE OF VIRGINIA,
Alexandria County, to wit:

Be it known, that on the twenty-ninth day of July, in the year of our Lord one thousand eight hundred and sixty-one, at the request of the cashier of the office of discount and deposit of the Old Dominion Bank at Alexandria, I, Robert J. Smith, notary public by lawful authority, duly commissioned and sworn, dwelling in Alexandria, in the county and State aforesaid, presented at the bank of the Old Dominion, at Alexandria, Va., the original note, whereof the above is a true copy, and

demanded of P. E. Hoffman, cashier, payment of the sum of money in the said note specified, whereunto he replied, "There are no funds."

Therefore I, the said notary, have protested, and by these presents solemnly protest against the drawers and endorser of the said note, and all others whom it doth and may concern, for all costs, ex-
[page 27] change, re-exchanges, damages, and interest suffered and to be suffered for the want of payment thereof.

And in the same day I delivered a notice of protest to W'm N. McVeigh by leaving it at his dwelling, in the hands of his white servant, informing him that he, the said endorser, was held liable for the payment of said note.

In testimony whereof, I have hereunto set my hand and affixed my seal notarial, on the day and year aforesaid.

[SEAL.] ROB'T J. SMITH,
Notary Public.

Tax on seal, $1.50, cost of protest, 1.00—$2.50.

Protest-book No. 5, page 38.

Note.

$800.00.] ALEXANDRIA, 11*th May*, 1861.

Ninety days after date, we promise to pay to the order of Will-
91 iam N. McVeigh eight hundred dollars, at Bank Old Dominion, value received.

J. H. McVEIGH & SON.

Cr. drawer.

W. N. McV.

(Endorsed:) W. N. McVeigh.

Protest.

$800.00.] ALEXANDRIA, 11*th May*, 1861.

Ninety days after date, we promise to pay to the order of
[page 28] William N. McVeigh eight hundred dollars, at Bank Old Dominion, value received.

J. H. McVEIGH & SON.

Cr. drawer.

W. N. McV.

(Endorsed:) W. N. McVeigh.

STATE OF VIRGINIA,
Alexandria County, to wit:

Be it known, that on the twelfth day of August, in the year of our Lord one thousand eight hundred and sixty-one, at the request of the cashier of the office of discount and deposite of the Old Dominion Bank, at Alexandria, I, Robert J. Smith, notary public by lawful authority, duly commissioned and sworn, dwelling in Alexandria, in the county and State aforesaid, presented at the Bank of the Old Dominion, at Alexandria, the original note, whereof the above is a true copy, and demanded of P. E. Hoffman, cas., payment of the sum of money in the said note specified, whereunto he replied, "There are no funds."

Therefore I, the said notary, have protested, and do by these presents solemnly protest, against the drawers and endorser of said note, and all

others whom it doth or may concern, for all costs, exchange,
[page 29] re-exchange, damages, and interest suffered and to be suffered for the want of payment thereof.

And in the same day I delivered notice of protest to William N. McVeigh, by leaving it at his dwelling, in the hands of his white servant, informing him that he, the said endorser, was held liable for the payment of said note.

92 In testimony whereof I have hereunto set my hand and affixed my seal notarial on the day and year aforesaid.

[SEAL.] ROB'T J. SMITH,
Notary Public.

Tax on seal, $1.50; cost of protest, 1.00—$2.50.

Note.

$2,500.00.] ALEXANDRIA, 17*th June*, 1861.

Ninety days after date we promise to pay to the order of William N. McVeigh twenty-five hundred dollars, at Bank Old Dominion, value received.

J. H. McVEIGH & SON.

(Endorsed:) W. N. McVeigh.

1863, June 10—By cash, on acc't, twenty-three hundred and seventy-nine dollars.

[page 30] *Protest.*

$2,500.00.] ALEXANDRIA, 17*th June*, 1861.

Ninety days after date we promise to pay to the order of William N. McVeigh twenty-five hundred dollars, at Bank Old Dominion, value received.

J. H. McVEIGH & SON.

(Endorsed:) W. N. McVeigh.

STATE OF VIRGINIA,
Alexandria County, to wit:

Be it known that on the eighteenth day of September, in the year of our Lord one thousand eight hundred and sixty-one, at the request of the cashier of the office of discount and deposit of the Old Dominion Bank, at Alexandria, I, Robert J. Smith, notary public by law-
93 ful authority, duly commissioned and sworn, dwelling in Alexandria, in the county and State aforesaid, presented at the Bank of the Old Dominion, at Alexandria, the original note, whereof the above is a true copy, and demanded of P. E. Hoffman, cas., payment of the sum of money in the said note specified, whereunto he replied, "There are no funds."

Therefore I, the said notary, have protested, and do by these presents solemnly protest, against the drawers and endorser of the said note, and all others whom it doth or may concern, for all costs, exchange, re-exchange, charges, damages, and interest suffered and to be
[page 31] suffered for the want of payment thereof.

And in the same day I delivered notice of protest to W'm N. McVeigh, by leaving it at his dwelling, in the hands of his white servant, informing him that he, the said endorser, was held liable for the payment of said note.

In testimony whereof I have hereunto set my hand and affixed my seal notarial on the day and year aforesaid.

[SEAL.] ROB'T J. SMITH,
Notary Public.

Tax on seal, $1.50; cost of protest, 1.00—$2.50.

Note.

$2,000.00] ALEXANDRIA, 8*th June*, 1861.

Ninety days after date we promise to pay to the order of William N. McVeigh two thousand dollars, at Bank Old Dominion, value received.

J. H. McVEIGH & SON.

Cr. drawer.

W. N. McV.

(Endorsed:) W. N. McVeigh.

[page 32] *Protest.*

$2,000.00.] ALEXANDRIA, 8*th June*, 1861.

Ninety days after date we promise to pay to the order of
94 William N. McVeigh two thousand dollars, at Bank Old Dominion, value received.

J. H. McVEIGH & SON.

Cr. drawer.

W. N. McV.

(Endorsed:) W. N. McVeigh.

STATE OF VIRGINIA,
Alexandria County, to wit:

Be it known that on the ninth day of September, in the year of our Lord one thousand eight hundred and sixty-one, at the request of the cashier of the office of discount and deposit of the Old Dominion Bank, at Alexandria, I, Robert J. Smith, notary public by lawful authority, duly commissioned and sworn, dwelling in Alexandria, in the county and State aforesaid, presented at the Bank of the Old Dominion, at Alexandria, the original note, whereof the above is a true copy, and demanded of P. E. Hoffman, cas., payment of the sum of money in the said note specified, whereunto he replied, "There are no funds."

Therefore I, the said notary, have protested, and do by these presents solemnly protest, against the drawers and endorser of the
[page 33] said note, and all others whom it doth or may concern, for all costs, exchange, re-exchange, charges, damages, and interest suffered and to be suffered for the want of payment thereof.

And in the same day I delivered notice of protest to W'm N. McVeigh, by leaving it at his dwelling, in the hands of his white servant, informing him that he, the said endorser, was held liable for the payment of said note.

In testimony whereof I have hereunto set my hand and affixed my seal notarial on the day and year aforesaid.

[SEAL.] ROB'T J. SMITH,
Notary Public.

Tax on seal, $1.50; cost of protest, $1.00—$2.50.

Note.

$2,500.] ALEXANDRIA, *May 17th*, 1861.

Ninety days after date we promise to pay to the order of W.
95 N. McVeigh twenty-five hundred dollars, for value received, negotiable and payable at Bank of the Old Dominion.

J. H. McVEIGH & SON.

(Endorsed:) W. H. McVeigh.

1863, June 10.—By cash of M. L. Baldwin, as per C. A.
[page 34] Baldwin & Co's check, $1,814.95.

Protest.

$2,500.] ALEXANDRIA, *May* 17, 1861.

Ninety days after date we promise to pay to the order of W. N. McVeigh twenty-five hundred dollars, for value received, negotiable and payable at Bank of the Old Dominion.

J. H. McVEIGH & SON.

(Endorsed:) W. N. McVeigh.

STATE OF VIRGINIA,
Alexandria County, to wit:

Be it known that on the seventeenth day of August, in the year of our Lord one thousand eight hundred and sixty-one, at the request of the cashier of the office of discount and deposite of the Old Dominion Bank, at Alexandria, I, Robert J. Smith, notary public by lawful authority, duly commissioned and sworn, dwelling in Alexandria, in the county and State aforesaid, presented at the Bank of the Old Dominion, at Alexandria, the original note, whereof the above is a true copy, and demanded of P. E. Hoffman, cas., payment of the sum of money in the said note specified, whereunto he replied,
[page 35] "There are no funds."

Therefore I, the said notary, have protested, and do by these presents solemnly protest, against the drawers and endorser of the said note, and all others whom it doth or may concern, for all costs, exchange, re-exchange, charges, damages, and interest suffered and to be suffered for want of payment thereof.

And in the same day I delivered notice of protest to W. N. McVeigh, by leaving it at his dwelling, in the hands of his white servant, informing him that he, the said endorser, was held liable for the payment of said note.

96 In testimony whereof I have hereunto set my hand and affixed my seal notarial on the day and year aforesaid.

[SEAL] ROB'T J. SMITH,
Notary Public.

Tax on seal, $1.50; cost of protest, 1.00—$2.50.

And thereupon the plaintiff rested.

The defendants, to maintain the issue on their part, proved by the testimony of James H. and W'm N. McVeigh that at the date and endorsement of all except the two notes dated June 8th and June
[page 36] 17th, 1861, they resided in the city of Alexandria; that some weeks before the military occupation of said city by the Fed-

eral forces, in May, 1861, the family of W'm N. McV., the endorser, was sent to Culpeper County, V'a, to a farm. This farm had been the property of their brother, and which defendants had purchased, and his widow and family were permitted to reside on it by defendants after their purchase; that May 24th, 1861, Alexandria was occupied by Federal military forces; that on the 30th of May, 1861, said W'm N. McV. and J. H. McV. left Alexandria and joined their families, the family of the latter then being in the county of Loudoun; that W'm N. McV. remained with his family in Culpeper, at said farm, until the fall of '61; went then to Richmond, V'a, where he resided, keeping house with his family continuously throughout the whole period of the war, and until about two years after the institution of this suit, during which residence, with the exception of a year or so, near its close, he was engaged in commercial business in said city of Richmond; that both
[page 37] of said defendants and Edgar L. McVeigh were within the Confederate lines throughout the whole period of the war.

The defendant W'm N. McVeigh admitted that the notes dated May 17th and June 17th, 1861, were discounted for his use, and that he was liable for whatever was due upon them, after allowing the credit endorsed thereon, and proved that all the other notes were for the accommodation of the makers, W. N. McV. himself receiving no benefit therefrom. It was admitted that the notes of June 8th and June 17th were notes given in renewal of notes for corresponding amounts, given before the outbreak of the war, said renewal notes being made by Rob't Crupper, on blank signatures and endorsements in his possession.

The defendants proved that no demand was made upon them for the payment of said notes, and no notice was given them that they were held bound for their payment, until and except as they were served with process in this suit; and further, that W'm N. McV., before leav-
97 ing Alexandria on said 30th of May, 1861, informed the officers and a director of the bank of his intention to leave, and of
[page 38] where he was going.

The pl'tiffs thereupon, further to maintain the issue on their part, offered to prove and were allowed over the def'ts' objection to prove, by the defendant J. H. McV. that in May, 1864, he deposited at the branch of the Bank of the Old Dominion, at Pearisburg, an amount of Confederate notes sufficient to pay all his supposed indebtedness to the Bank of the Old Dominion (which embraced many notes—business and accommodation notes other than the notes sued on), and for the purpose of such payment, under an act of the Richmond legislature, authorizing such payment, Confederate notes being then of the value of twenty for one in gold; that said J. H. McV. afterwards informed W. N. McV. that he had made such deposite for the purpose stated, without specifying, however, what particular notes were embraced in such payment.

Plaintiff further proved by said W'm N. McV. that at the time of his leaving Alexandria he was president of the Bank of Old
[page 39] Dominion; that during his residence within the Confederate lines he acted as president in attending to such matters there as required his attention, to wit, the collection of certain moneys and the payment of certain debts of the bank, not pretending, however, to have anything to do with the management of its affairs in Alexandria, and that he tendered his resignation, in writing, to the stockholders on t e 23d May, 1865, which was in the words and figures following:

ALEXANDRIA, *May 23d*, '65.

To the board of directors of the Bank of the Old Dominion:

GENTS: I herewith tender you my resignation as pres't of this bank, to take effect from this day.

Very res'y y'rs,

W. N. McVEIGH.

And which was not accepted That pryor to the deposit by Ja's H. McV., at Pearisburg, and for the purposes stated, he was in-
[page 40] formed by J. H. McV. of his intention to make it, and was afterwards informed by him that he had made it, but was not informed and did not know what particular notes were embraced in the payment made by it. He understood that all S. H. McV. & Son's indebtedness to the bank was paid, and if the notes sued on had
98 not before been paid, he understood they must have been embraced in the Pearisburg payments.

Plaintiffs further proved that J. H. McV. & Son had a confidential clerk and agent, Rob't Crupper, who remained in Alexandria, and resided throughout the war, and attended to their business in Alexandria, the little remnant of it, J. H. McV. & Son having previously sent all their goods within the Confederate lines; so far as they know, if anything at all was left behind it was of small value, five or ten dollars; that he was authorized by a power of attorney executed before the war, to sign the name of J. H. McV. & Son, and to make and endorse notes in their name, which power was known to W'm N. McVeigh ,and was lodged with the different banks in Alexandria; that W'm N. McVeigh was in the habit of signing notes in blank, to be
[page 41] used by J. H. McVeigh & Son.

Plaintiffs further proved by W'm N. McVeigh that he was present at a meeting of the stockholders of the Bank of the Old Dominion, on the 18th July, 1865, and participated in its proceedings as a stockholder; that he did not know whether said meeting, by resolution, repudiated the Pearisburg payment, and directed the notes supposed to be paid to be sued on or not, and the plaintiff having proved the passage of the resolution following, at said meeting:

"Resolved, That the notes purporting to have been paid at the Pearisburg branch, but which constitute a part of the assets of this mother bank, are deemed by this meeting as still due to it, and the president and directors, now about to be elected, be requested to take such legal proceedings against the drawers and endorsers, to recover the same, as they may find for the true interests of the bank."

—offered to read the same to the jury for the purpose of proving notice to W'm N. McV. of the dishonor of the several notes sued
[page 42] on, to the introduction of which for said purpose the defendants objected, and the court sustained the objection.

To this ruling of the court the plaintiffs, by their counsel, except, and pray that this their bill of exceptions may be signed, sealed, enrolled, and made part of this record, which is accordingly done.

[SEAL.] ENOCH M. LOWE,
Judge of the Corporation Court of the City of Alexandria.

Plaintiffs' second bill of exceptions.

THE BANK OF THE OLD DOMINION
vs.
JAMES H. McVEIGH AND WILLIAM N. McVEIGH.

Be it remembered that at the trial of this cause the plaintiff

99 while the witness William H. Lambert, the cashier of the Bank of the Old Dominion, was on the stand, asked witness the question, "Was there a report of the proceedings of the meeting of the stockholders of the bank, held in Alexandria on the 18th day of July, 1865, published in the Alexandria Gazette." The witness stated that
[page 43] there was; that he acted as the secretary at said meeting, and furnished the report to the reporter of that paper.

The witness was then handed a report taken from that paper, and requested to compare it with the official proceedings, and state whether or not the report was accurate. After comparing it, as requested, he stated that it was accurate.

The plaintiff then offered to read to the jury the said report in the Alexandria Gazette of July 19th, 1865, in the following words and figures, to wit:

Bank of the Dominion.

Pursuant to a call, a meeting of the stockholders of the Bank of the Old Dominion was held at Liberty Hall, in this place, yesterday morning.

R. N. Miller, esq., was called to the chair, and Mr. W. H. Lambert appointed secretary.

Upon investigation it was ascertained that there were over two thousand votes represented in the meeting.

A statement of the condition of the bank and its branch at Pearisburg was read by the secretary.

[page 44] It appears that the capital stock of the mother bank is $328,000, and of the branch at Pearisburg $75,000; the circulation of the mother bank, $19,000; of the branch, $294,000; Virginia State stock hypothecated, $13,000; due depositors, $42,000; due banks, $80,000; value of real estate, $23,000; Virginia State stock and bonds guaranteed by the State, $374,000; due by depositories, $14,000; due by banks, $3,900; specie on hand, $12,750; Federal currency, $2,400; Virginia bank notes, $36,000; bills and notes discounted, $220,000.

All the proceedings, with the exception of the circulation, refers to the Bank of the Old Dominion.

As far as the statement of the branch at Pearisburg is concerned, it appears that that bank has received a portion of the debts due the Bank of the Old Dominion at Alexandria, in Confederate notes, for notes discounted and held by the said mother bank, and embraced in its assets.

The principal assets of the branch bank are in Confederate notes and bonds, being about $95,000 of the former, with only about
[page 45] $4,000 in specie. The branch bank has also issued $23,500 in notes of the denomination of ones and twos, since January, 1861.

100 After the reading of the statement, on motion of M'r Lewis McKenzie, a committee consisting of Mess'rs Geo. H. Smoot, B. H. Lambert, and John B. Smoot were appointed to make an examination into the accounts of the bank and report to the meeting. This committee reported that they were unable to come to any absolutely correct estimate of the condition of the bank, and could only make a report approximating to the same. This report was necessarily so imperfect, as stated by the cha'r, and might lead to such grave misapprehensions, that we omit its publication.

M'r R. H. Miller then introduced the following resolutions, which were supported by himself and Mess'rs Geo. H. Smoot, R. H. Stabler, and the first by J. J. Wheat:

Resolved, That the action of the president in drawing the interest on the State bonds, deposited with the State treasurer as security
[page 46] for the issues of the bank and protection of the note-holders, was not justified by his position as president, and meets with the disapprobation of this meeting.

Resolved, That the withdrawal of the interest and its investment in Confederate bonds, and the subsequent sale of these bonds for the Confederate notes, is a further assumption of power over the property of the bank, and presents a grave question as to his personal responsibility for the results of his action, and the president and directors, now about to be elected, be requested to take legal counsel in the matter, and act in such manner as shall best promote the interests of the stockholders.

M'r A. G. Pendleton opposed the passage of the resolutions, and offered the following substitute, which he stated would arrive at the same result, without casting censure upon M'r McVeigh:

Resolved, That doubts having been expressed as to the power of W'm N. McVeigh, president of the Bank of the Old Domin-
[page 47] ion, to withdraw the interest on the State bonds deposited with the State treasurer as security for the issues of the bank, and for the protection of the note-holders, the board of directors to be elected at this meeting be directed to inform themselves in regard to the effect of said action, and whether he should be held responsible for the same, and take such proceeding as they may deem necessary for the interest of the bank.

M'r McVeigh calmly reviewed his action in regard to the course he had pursued, and caused the secretary to read a number of letters from various bank-officers bearing upon the subject, and vindicating his policy.

M'r C. F. Lee favored the adoption of the substitute in some remarks; after which the vote on the substitute was taken, and it was adopted; so the original resolutions were lost.

101 M'r Miller then offered the following; which was laid on the table:

Resolved, That the action of the Pearisburg branch, in re-
[page 48] ceiving payment in Confederate currency of debts due to the mother bank, and payable only at Alexandria, was unwise and unjustifiable, and meets with the unqualified disapprobation of this meeting.

M'r Miller then offered the following; which was adopted:

Resolved, That the notes purporting to have been paid at the Pearisburg branch, but which constitute a part of the assets of the mother bank, are deemed by this meeting as still due to it, and the president and directors now about to be elected be requested to take such legal proceedings against the drawers and endorsers to recover the same as they may find for the true interests of the bank.

A resolution instructing the chairman to appoint a committee to wait upon the proper military authorities and urge upon them the necessity of at once giving to the bank the use of its banking-house, and request-

ing compensation from the government for the use of the same for the past two years, was adopted.

[page 49] The meeting then proceeded to the election of directors for the Bank of the Old Dominion and its branch at Pearisburg, when the following gentlemen were duly elected:

Directors of the Bank of the Old Dominion.—George H. Smoot, B. H. Lambert, J. B. Daingerfield, J. J. Wheat, W'm G. Cazenove, Jno. B. Smoot, C. F. Lee, N. Boust, J. Wallace Hooff.

Directors of the branch at Pearisburg.—M. Chapman, W. B. Mason, H. C. French, W. C. Charlton, W. H. Hall, J. A. Peck, A. Fry.

The meeting then adjourned.

To which the defendants objected, and the court sustained the objection; to which ruling of the court the plaintiff excepted, and
102 prayed that this its bill of exceptions be signed, sealed, and enrolled, which is accordingly done.

[SEAL.] ENOCH M. LOWE,
Judge of the Corporation Court of the City of Alexandria.

[page 50] *Plaintiffs' 3d bill of exception.*

THE BANK OF THE OLD DOMINION
vs.
JAMES H. MCVEIGH AND WILLIAM N. MCVEIGH.

Be it remembered that on the trial of this cause, after the introduction of the evidence set forth in the plaintiffs' first bill of exceptions, which is hereby incorporated in this bill of exceptions and made a part hereof, the plaintiff, to maintain the issue on its part, read in evidence to the jury the resolution adopted by the meeting of the stockholders of the Bank of the Old Dominion, held in Alexandria on the 18th day of July, 1865, in the following words, to wit:

Resolved, That the notes purporting to have been paid at the Pearisburg branch, but which constitute a part of the assets of this mother bank, are deemed by this meeting as still due to it, and the president and directors, now about to be elected, be requested to take such legal proceedings against the drawers and endorsers to recover the same as they may find for the true interests of the bank.

[page 51] The plaintiff proved by the defendant, William N. McVeigh, that while he was keeping house in the city of Richmond, in 1862, he voted as a refugee from Alexandria for a delegate to represent the county of Alexandria in the general assembly of Virginia, at Richmond, under the provisions of an act of said general assembly; that the by-laws of the Bank of the Old Dominion provided that the president of the bank shall have a general superintendence of and diligently attend to the transaction of the business of the bank.

The plaintiff then prayed the court to grant the following fifteen instructions to the jury:

1.

If the jury believe from the evidence that when the notes sued on were made, endorsed, and discounted, the makers, endorser, and holder all resided in the city of Alexandria, and that before the maturity of

said notes the endorser left the city of Alexandria only temporarily, and with no purpose of abandoning said city as a residence or
103 place of business at the time; and if the jury shall further believe
[page 52] that at the maturity of said notes they were dishonored and protested, and notices of protest left on the day of protest at the residence or place of business of the endorser, such notice was sufficient to bind the endorser, and the jury must find for the plaintiff, although they believe from the evidence that the endorser, because of the continuance of the war, afterwards acquired a residence elsewhere.

2.

If the jury believe from the evidence that at the time the notes sued on were made, endorsed, and discounted, the endorser, William N. McVeigh, resided in the city of Alexandria, and that before the maturity of the said notes he left the said city and was absent at the time when the notes, respectively, were dishonored; and shall further believe that the plaintiff, upon the best information which it had or could obtain, believed that the said endorser was only temporarily absent from the city of Alexandria and had not changed his residence, and in
[page 53] good faith gave notice of the dishonor and protest of said notes by leaving notice at his former residence or place of business in said city, such notice was sufficient, and the jury must find for the plaintiff, whether Alexandria was actually the residence of the endorser at the time of said protest or not.

3.

If the jury believe from the evidence that at the time the notes sued on were made, endorsed, and discounted, the makers, endorser, and holder resided in the city of Alexandria, and before the maturity of said notes the endorser, William N. McVeigh, left the city of Alexandria and went to reside in another State, or within the jurisdiction of another government; if the notices of the dishonor and protest of said notes were left at the former residence or place of business of the endorser on the day of protest, they must find for the plaintiff; and if the endorser left the city of Alexandria after the occupation of said city by the Federal forces, and went within the Confederate lines and within the jurisdiction of the Confederate government, that was in the light of the existing war, and for the purposes of this suit going to another State and within the jurisdiction of another government.

[page 54] 4.

The court instructs the jury that if they believe that the endorser, William N. McVeigh, left the city of Alexandria after the making and endorsing of the notes sued on and before their maturity, and after the occupation of the said city by the Federal forces, and went within the Confederate lines and the Confederate jurisdiction, for the pur-
104 pose of adhering to the Southern Confederacy, and in obedience to the Virginia ordinance of secession, his absence from Alexandria at the time the notes sued on were protested was voluntary; and if the jury shall further believe, that when the said notes matured they were dishonored and protested, and notices of protest on the day thereof were left at the residence or place of business of the said endorser, they must find for the plaintiff.

[page 55] 5.

If the jury believe from the evidence that the endorser, W'm N. McVeigh, resided in the city of Alexandria at the time the notes sued on were respectively made and endorsed, and that before the maturity of said notes he left the city of Alexandria, and at the time of the protest of the same, respectively, he was absent from his home in said city upon a visit or sojourn of uncertain character, and that on the day of the dishonor and protest of said notes, respectively, notices of such dishonor and protest were left at his residence or place of business in said city, the court instructs the jury that under the rule of commercial law, applicable to such case, the said notices are sufficient to bind the endorser; and if the jury believe from the evidence that the said endorser, the said W'm N. McVeigh, left the said city before the maturity of said notes, and after the occupation of said city by the Federal forces, in obedience to or because of the secession ordinance of the State of Virginia, and went within the Confederate lines, and adhered to the Confederate government, and for these reasons was absent from the city of
[page 56] Alexandria at the time notices of protest were left at his residence or place of business, the court further instructs the jury, that the Supreme Court of the United States, which by the Constitution of the United States, and laws made in pursuance thereof, is made the tribunal of last resort upon questions of the validity and constitutionality of laws—State and Federal—has decided that such ordinance of secession was unconstitutional, and the court, in deference to such decision, instructs the jury that the secession ordinance of the State of Virginia was unconstitutional, and does not release the said endorser from the operation of the aforesaid rule of the commercial law; and the jury, notwithstanding said ordinance, and the absence of said endorser from the city of Alexandria, in obedience thereto, or because thereof, must find for the plaintiff.

[page 57] 6.

If the jury believe from the evidence that notices of the protest of the notes sued were left at the residence or place of business of the endorser, W'm N. McVeigh, in the city of Alexandria, where he resided at the time the said notes were made and endorsed, on the day they were respectively dishonored and protested, and that the said endorser had, before the maturity of said notes, and after the occupation of said
105 city by the Federal forces, left his home and gone within the Confederate lines, for the purpose of adhering to the Confederate government, and was, under these circumstances and for these reasons, absent from his home, so that he did not actually receive said notices of protest, the court instructs the jury that such absence does not relieve him from liability as endorser; the Supreme Court of the United States, by whose decisions upon this question the court is bound, having decided that the ordinance of secession was invalid, and does not protect parties who voluntarily obeyed said ordinance, from the consequences of such obedience; and, therefore, the court instructs the jury
[page 58] that if they believe as heretofore provided and premised, they must find for the plaintiff.

[page 59] 7.

If the jury believe from the evidence that at the time of making,

endorsing, and discounting of the notes sued on, the makers, endorser and holder resided in the city of Alexandria, and that before the maturity of said notes the endorser, William N. McVeigh, left his residence in the city of Alexandria, and went beyond the territorial limits and jurisdiction of the government, in the permanent occupation and control of the city of Alexandria, and was so absent from his home at the time when the notes sued on were respectively dishonored and protested, and that on the day of such protest, respectively, notices thereof were left at the residence or place of business of said endorser, the court instructs the jury that, under the rule of commercial law, such notices were sufficient to bind the endorser, and if the jury find from the evidence that the said endorser left the city of Alexandria after the occupation of said city by the said Federal forces, and went within the Confederate lines, in obedience to the ordinance of secession, and in adherence to the Confederate government, the court instructs the jury that the said ordinance of secession and the existing war do not take this case out of
[page 60] the general rule aforesaid, because the Supreme Court of the United States, which the Constitution, and laws made in pursuance thereof, makes the tribunal of final resort as to such questions, has decided that said ordinance of secession was unconstitutional, null, and void; and the court, bound by that authority, instructs the jury that said ordinance was unconstitutional, and was no valid excuse for the absence of the endorser from the city of Alexandria at the time of the protest of said notes, respectively.

[page 61] 8.

If the jury believe from the evidence that at the time the notes sued on were made, endorsed, and discounted, that the endorser, W'm N. McVeigh, resided in the city of Alexandria, was president of the Bank of the Old Dominion, and had his place of business at the banking-
106 house of said bank of said city, and that before the maturity of the said notes, and before the expiration of the term of his office, to which he had been elected before the secession of the State of Virginia, he went within the Confederate lines, temporarily, and with the intention of returning to his residence in said city, and without resigning his said office of president; and that the plaintiff and said endorser regarded said endorser as the president of said bank at the time and after the protest of the said notes, respectively, and at or after that time he, the said endorser, acted as such president, and that it was his duty, as president, generally to superintend and diligently to attend to the transaction of the business of the bank; and he knew of the dishonor of said notes at the time of their dishonor, or at any time during
[page 62] the war, being and acting at that time as president of said bank, that it was his duty as such president to know that the bank held him liable as such endorser, and no formal notice of the dishonor and protest of said notes was necessary in order to bind him.

[page 63] 9.

If the jury believe from the evidence the following facts:

1. That the endorser, W'm N. McVeigh, resided in the city of Alexandria at the time the notes sued on were respectively made, endorsed, and discounted.

2. That the said endorser, before the maturity of said note' and after the occupation of the city of Alexandria by the Federal forces, went to the county of Culpeper to join his family, who were there on a visit.

3. That the makers, James H. McVeigh & Son, had an agent, duly appointed before the war, residing and acting for them in Alexandria, at the time the notes sued on respectively matured, and were protested.

4. That the plaintiff discounted said notes, and was the holder of them at their maturity, and at the time they respectively became due had them protested for non-payment, and gave notice to the endorser of such protest, by leaving notices at the residence or place of business of said endorser in Alexandria.

5. That with the knowledge of the said endorser, both as
[page 64] such endorser and as president of the Bank of the Old Dominion, the amount of said notes was paid at the branch bank at Pearisburg, in depreciated Confederate money, in the month of May, 1864.

6. That the stockholders of the Bank of the Old Dominion, at a meeting at which the endorser, William N. McVeigh, was present, and in the proceedings of which he participated, held on the 18th day of July, 1861, adopted a resolution repudiating the payment made at the branch bank at Pearisburg, in Confederate money, in May, 1864, and directing the officers and directors of the bank, then to be elected, to institute
107 legal proceedings against the drawers and endorsers of said notes to recover the same, and that such notice was, under all the circumstances, given in a reasonable time after the suspension of hostilities—the jury must, under this state of facts, if proved, find for the plaintiff in this action.

[page 65] 10.

If the jury believe from the evidence that the endorser, William N. McVeigh, had knowledge that the notes sued on were dishonored and protested at their maturity, at any time during the war, and that the amount of said notes was paid at Pearisburg, in Confederate money, in 1864, and that in a reasonable time after the suspension of hostilities, all the facts and circumstances of the case being considered, he was notified, either by the officers of the bank, or by resolution of the stockholders, in general meeting assembled, that the notes sued on were unpaid, and that he was held liable as endorser thereon, they must find for the plaintiff.

[page 66] 11.

If the jury believe from the evidence that William N. McVeigh, the endorser of the notes sued on, resided in the city of Alexandria at the time he endorsed said notes, and that he afterwards and before the maturity of said notes, and after the occupation of said city by the Federal forces, left the city of Alexandria and went within the Confederate lines and adhered to the Confederate government, and that the said notes were not paid at their maturity, and were protested for non-payment, and notices of non-payment and protest of said notes were, on the days of protest, respectively, left at the residence or place of business of the said endorser; and that the said endorser, after the occupation of the city by the Federal forces and before the close of the war, returned to the city of Alexandria, and while in said city, before the close of the war as aforesaid, he, the said endorser, was notified by the Bank of the Old Dominion that the notes sued on were not paid, and that he was held liable therefor as endorser, the jury must find for the plaintiff; and

the court instructs the jury that the war closed in Virginia on 2d of April, 1866.

[page 67]

12.

If the jury believe from the evidence that at the time of the endorsement of the notes sued on, the endorser, William N. McVeigh, resided in the city of Alexandria; that before the maturity of the said notes, and after the occupation of said city by the Federal forces, he left the city of Alexandria and went within the Confederate lines and adhered to the Confederate government; and that the plaintiff, in good faith, and acting upon the best information it had or could obtain at the
108 time, left notices of the protest of said notes, on the day of the protest thereof, respectively, at the residence or place of business of the said endorser, in the said city; and that on the 18th day of July, 1865, the stockholders of the Bank of the Old Dominion held a meeting in the said city, at which meeting the said endorser was present, and in the proceedings of which he participated; at which meeting the said stockholders passed a resolution repudiating the payment of all notes due the mother bank, the amount of which had been paid in
[page 68] Confederate money, at Pearisburg, in 1864, and claiming that such notes were still due, and that the makers and endorsers were held liable therefor; and if the jury believe from the evidence that the said endorser knew of the pretended payment of the notes sued on, in Confederate money, at Pearisburg branch in 1864, the court instructs the jury that such action was due diligence on the part of the plaintiff, and was sufficient notice to said endorser, and they must find for the plaintiff.

13.

If the jury believe from the evidence that Robert Crupper was the attorney in fact of James H. McVeigh & Son, by due appointment made before the war, with power and authority to make and endorse notes in the name of said James H. McVeigh & Son, and that the said William N. McVeigh knew of said power, and, with the knowledge, endorsed notes in blank for the purpose of being filled up and used by James H. McVeigh & Son; and shall further believe that the notes dated the 8th day of June, respectively, was so endorsed in blank by William N. McVeigh, and filled up by Robert Crupper, in
[page 69] renewal of notes given before the war, the court instructs the jury that such notes are as binding as they had been made endorsed before the war.

14.

If the jury believe from the evidence that all of the notes sued on matured and were protested after the passage of the ordinance of the State of Virginia No. 63, of date June 24, 1861, and while said ordinance was still in force; and shall also believe that the makers and endorsers of said notes were at the time in the State of Virginia, that adhered to the Confederate government and within the Confederate lines, and the Bank of the Old Dominion was within the Federal lines, the court instructs the jury that as to such notes the said William N. McVeigh was bound, as endorser, without demand, protest, or notice.

The court instructs the jury that the payment made in
[page 70] Confederate money, in May, 1864, at the Branch Bank at Pearisburg, by James H. McVeigh & Son, is no defence to this action, and no bar to recovery in this suit.

109 And the court granted the instruction numbered 15 and refused all the others.

The defendants also prayed for one instruction, as follows:

Instruction asked by defendant.

If, on or about the 30th of May, 1861, and prior to the maturity of said notes, W. N. McVeigh, having previously sent his family, went himself within the Confederate lines, with the intention of not returning to Alexandria during its occupation by the United States forces, and remained with them continuously within the Confederate lines throughout the whole period of the war and until the year 1874, and such absence at the maturity of said notes, respectively, was known, or by the exercise of reasonable diligence must have been known to the plaintiff, there is no such evidence of notice of dishonor in
[page 71] the case as is sufficient to fix his liability as endorser, and the jury must find for him as to all except the two notes of May 17 and June 17, as to which notes they will find for the plaintiff.

Which instruction the court gave to the jury.

Thereupon the plaintiff excepted to the aforesaid rulings of the court in refusing the aforesaid instructions prayed by the plaintiff, and also in giving the instruction prayed by the defendants, and prayed that this his bill of exceptions be signed, sealed, and enrolled, which is accordingly done.

[SEAL.] ENOCH M. LOWE,
Judge of the Corporation Court of the City of Alexandria.

[page 72] *Plaintiffs' bill of exceptions.*

BANK OF THE OLD DOMINION
vs.
JAS. H. AND W. N. MCVEIGH.

The jury having found a verdict as follows:

We, of the jury, find the issues joined of the plaintiff, and we find for the plaintiff as to the defendant, James H. McVeigh, twelve thousand three hundred and twenty-three $\frac{55}{100}$ dollars ($12,323$\frac{55}{100}$) and allow interest thereon from the 1st day of January, 1866; and we find for the plaintiff as to the defendant, William N. McVeigh, eight hundred and six $\frac{5}{100}$ dollars (806\frac{5}{100}$), and allow interest thereon from the 1st day of January, 1866.

"R. M. LAWSON, *Foreman*"—

110 The plaintiff thereupon moved the court to set aside the verdict and grant them a new trial, on the ground of misdirection to the jury in giving the instruction prayed for by the defendants, and in refusing the fourteen instructions prayed for by the plaintiff the said instructions appearing in the plaintiff's bill of exceptions

filed in the cause; and also upon the ground that the verdict [page 73] is contrary to the evidence. But the court overruled the motion (the facts proved and the evidence offered in the case being such as and no other than the facts and evidence appearing in the bills of exceptions heretofore made a part of the record), and to this action of the court overruling said motion the plaintiffs except, and pray that this their bill of exceptions may be signed, sealed, and enrolled, which is done accordingly.

[SEAL.] ENOCH M. LOWE,
Judge of the Corporation Court of the city of Alexandria.

Defendants' bill of exceptions.

BANK OF OLD DOMINION
vs.
J. H. AND W. N. MCVEIGH. } In the corporation court of Alexandria.

After the refusal of the court to admit said resolution for the purpose stated in the first bill of exceptions (which is hereby made a [page 74] part hereof), the plaintiff then offered said resolution to show notice to the makers and endorser' of the notes sued on of the repudiation of the payment made at Pearisburg, in May, 1864, and that the bank held the said makers and endorser' liable for said notes.

The defendants objected to the introduction of the resolution for the purposes stated, but the court overruled the objection, and the resolution was thereupon read in evidence.

To this action of the court the defendants excepted, and prayed that this their bill of exceptions may be signed, sealed, and enrolled, and made a part of the record, which is done accordingly.

[SEAL.] ENOCH M. LOWE,
Judge of the Corporation Court of Alexandria.

Fee for copy, $15.

A true copy from the record.

Teste.

MORTON MARYE, *Clerk.*

A copy. Teste.

GEO. L. CHRISTIAN, *C. C.*

111 And at another day, to wit, at a supreme court of appeals held at the State court-house, in the city of Richmond, on Friday, the 15th day of December, 1876. This day came the parties, by their counsel, and by consent and for reasons appearing to the court, it was ordered that this cause be placed upon the privileged docket of the court.

And at another day, to wit, Wednesday, April, 1877. This day came again the parties, by their counsel, and this cause having been this day partly heard upon the transcript of the record of the judgment aforesaid, and the arguments of counsel, was continued until the morrow.

And at another day, to wit, Thursday, April 19, 1877. This cause was fully heard upon the transcript of the record of the judgment aforesaid, and the arguments of counsel, but because was not then advised of its judgment to be given in the premises, time was taken to consider thereof.

And now at this day, to wit, Thursday, the 13th December, 1877 (being the same day and year first herein written), came again the parties, by their counsel; and the court having maturely considered the transcript of the record of the judgment aforesaid, and the
112 arguments of counsel, is of opinion, for reasons stated in writing and filed with the record, that there is no error in the said judgment. Therefore, it is considered by the court here that the same be affirmed, and that the defendants in error recover against the plaintiff in error thirty dollars damages, and their costs by them about their defence in this behalf expended.

The reasons stated in writing and filed with the record, and referred to in the foregoing judgment of the court, are in these words and figures, to wit:

BANK OF THE OLD DOMINION
vs.
MCVEIGH.

When this cause was formerly before us, we held (McVeigh & al. vs. The Bank of the Old Dominion, 26 Gratt., 852) that the notices addressed to William N. McVeigh and delivered to his white servant at his residence in Alexandria, and the notice delivered to Ramsey, at the Bank of the Old Dominion, under the facts and circumstances disclosed by the record, were insufficient in law; and that for reasons set forth in the opinion, the court below erred in refusing to give the defendant's third instruction, which is in these words: "If the jury believe from the evidence aforesaid (the evidence in the cause) that the only notice of the non-payment and dishonor of the notes sued on given to
113 W'm N. McVeigh was the notice contained in the notarial certificate of protest, then said notice was invalid and inoperative to bind the said W'm N. McVeigh, and they must find for him;" and also that it erred in overruling the defendant's motion for a new trial; and it was considered by the court "that the judgment of the corporation court of the city of Alexandria be reversed and annulled, the verdict of the jury set aside, and a new trial awarded the plaintiff in error," and the cause was "remanded to said corporation court for further proceedings therein, in conformity with the principles herein declared, and in the opinion of the court filed with the record."

Nothing can be clearer, therefore, or more certain than that it was decided by this court in this cause, when it was here before, that the notarial protests and notices were insufficient in law to fix a liability in law upon the endorser, W'm N. McVeigh; and "that it was incumbent upon the defendant in error (the bank, now plaintiff in error), within a reasonable time after communication was restored between the parties by the termination of the war, to give the endorser notice of the non-payment and dishonor of the notes in controversy which were endorsed by him for the accommodation of the makers."

We have no doubt that these points were rightly decided, as we think is shown by the opinion which was delivered in support of the decision to which we refer, and which, on the main point, we think, is sus-
114 tained by the Supreme Court of the United States in the more recent case of Earle v. McVeigh (1st Otto, p. 503).

But the only question which has not been decided, and which is now properly before the court for i's determination, is, has such notice been given to the indorser since the termination of the war, in a reasonable time, as was held to be requisite by the former judgment of this court in this cause?

The points thus decided cannot be re-examined. After the cause was decided, the then defendant in error, the bank, moved the court for a rehearing, which was overruled, there being no doubt in the mind of any one of the judges who concurred in the decision that it was right, and to allow the plaintiff here to litigate the points which have been decided would be to give him a rehearing now, which was refused when asked for in time. There ought to be an end to controversy.

"According to the established rule of this court, these points are to be taken as settled law in this examination, and the question is, whether the case, as now presented to us, is beyond their influence?" as was said by Carr, J., in Valley Bank v. Stribling (7th Leigh, 59). In Chahova's case (21st Gratt., 824) it was held that a decision which had been made in the first trial upon a question in the cause, although by an equally divided court, was final and irreversible on the second trial, and could not be changed even if the court were disposed to change it, Moncure,
P., delivering the opinion. And in the case of Campbell's ex'or v.
115 Campbell's ex'or (22 Gratt.), Moncure, P., reviews the decisions of this court on the subject, and deduces from the' same doctrine, whether the decision was made upon an appeal from an interlocutory or final decree of the circuit court.

It is also the established doctrine in the Supreme Court of the United States. In a recent case (Supervisors v. Kennicott, 4 Otto, 498), Chief Justice Waite, speaking for the whole court, said: "It is settled in this court that whatever is decided here upon one appeal cannot be re-examined in a subsequent appeal of the same suit. Such subsequent appeal brings up for consideration the proceedings of the circuit court after the mandate of this court." The opinion he fortifies by a reference to numerous decisions of that court.

But why make further references in support of a rule which has been uniformly acted on by this court, and which is in conformity with established principles? There is nothing in the case, as now presented to us, which takes it beyond the influence of the well-established principle. The record of the second trial shows no new facts or change of circumstances which have the slightest bearing on the aforesaid decision.

At the second trial the plaintiff submitted a series of propositions in the shape of instructions, & moved the court to give them to the jury.

Of the fifteen instructions thus tendered, the court gave the 15th and rejected the fourteen. All of them from one to eight, inclusive,
116 and No. 14, controvert the foregoing decision of this court, not upon any new evidence which had any bearing upon the question, but upon grounds which were as cognizable by the court then as now, and were doubtless considered by the court as far as they were entitled to consideration, or to have any influence in the formation of its opinion.

The attempt to introduce political questions, and to create issues between this court and the federal court, which could have no further influence upon the decision now than before, as no new fact has been brought into the record on those subjects, cannot be sustained. The court before refused to give any opinion on the constitutionality of the ordinance of secession, as it does now, such question being irrelevant, and not involved, as we think, in the decision of the cause. The decision of this court would be the same, whether it held the said ordinance of secession to be constitutional or unconstitutional. For the grounds of our decision we refer again to our opinion before referred to (26 Gratt., supra). All these matters which were foreign to the questions in

have prevented service at that time of the notice which was necessary to fix his liability? Was it due diligence; was it reasonable to delay two months longer, before giving him an intimation that the notes
122 which he believed were paid by the makers were still due, and that the bank looked to him for payment; taking the resolution adopted on the 18th of July as equivalent to notice?

But was he notified of that resolution, or had he knowledge that said resolution had been adopted at the meeting of the stockholders? It is not pretended that the bank even notified him of it. But the plaintiff relies on the fact that he was present at the meeting, and participated in its proceedings, to prove that he had knowledge of the resolution. The newspaper report of the proceedings of the meeting, which the plaintiff offered evidence to prove was accurate, shows that W'm N. McVeigh was present at the meeting, and participated in the proceedings in relation to another matter, in which he was deeply interested, but does not shew that he was present after that matter was disposed of, when the resolution in question was offered or when it was considered and adopted, but it does shew that he took no part in that proceeding.

Now it is fair to presume, that if he had been present and aware of it, he would not have allowed a resolution to pass sub silentio which so seriously affected his interests, and which assumed a position which he did not believe to be correct, as is shown by his strenuous resistance to it, when afterwards brought to a legal test in the circuit court,
123 presided over by a distinguished judge, who sustained him, though the act of the legislature, under the authority of which the makers had paid the notes, was long years afterwards held by a majority of this court to be unconstitutional.

We say it is fair to presume that he would not have remained silent and acquiescent, but that he would have made an effort to prevent its adoption, as he had done in the other matter affecting him. The presumption is that he was not present when the resolution was offered and passed, or, at least, that he was not aware of it, as he did not oppose it. The presumption is conclusive in the absence of positive testimony to the contrary. There is no proof that he was then present or that he knew of it. But there is positive proof to support the presumption that he did not know of it. His own testimony, introduced by the plaintiffs, proves positively that he had no knowledge of said resolution. And it is further proved by him and James H. McVeigh, for the defence, "that no demand was ever made upon them for the payment of the said notes, and that no notice was given them; that they were held bound for the payment until and except as they they were served with notice in this suit."

Now, the 9th and 12th instructions, tendered by the plaintiff, are fatally defective, in this, that they in effect not only charge the jury to draw an inference from a fact (the presence of W'm N. McVeigh
124 at the meeting) which is not sufficient to warrant such inference (but, as we have shown, is contrary to the natural presumption), but also to disregard the positive testimony. The court did not err, therefore, in refusing to give them to the jury.

There is another ground upon which the learned counsel for the plaintiff relies as presumptive evidence of knowledge that said McVeigh was president of the bank. It is true he was president when he abandoned his residence in Alexandria and crossed the belligerent lines, and never resigned his office until the 23d of May, 1865, and that he attended to some matters of the bank in that capacity within the Con-

federate States which were after the war disclaimed by the bank. But to infer from the foregoing, and from the duty of the president "generally to superintend and diligently to attend to the business of the bank," that he had knowledge of the non-payment and dishonor of the notes in controversy, and that the bank looked to him for payment, when the fact is palpable on the face of the record that he was separated from the bank by hostile armies during the whole period, and that the said duties of president could not be and were not performed, by him, is to close the eyes to the facts, and has not even the show of plausibility. The inference is at least as illogical as the proposition we have just disposed of.

The 10th instruction is not law, nor adopted to the facts
125 of the case, and was calculated to mislead the jury. The court might properly have *reversed* it, and instructed the jury that though the endorser had knowledge, any time during the war, that the notes were dishonored and protested, but that the amount of said notes was afterwards paid at Pearisburg in 1864 in Confederate money, as authorized by act of the legislature of the State, although years afterwards said law was adjudged to be unconstitutional, and that said rndorser believed that said payment was valid, and had no knowledge that the bank claimed to the contrary, prior to the adoption of the resolution at a meeting of the stockholders on the 18th July, 1865, referred to (if he had any knowledge then, which is denied), between three and four months after the cessation of hostilities in this State, and after communication had been restored between his residence and the domicil of the bank, and nearly two months after he was in Alexandria, on the 23d of May, 1865, and in actual correspondence with the bank; although he was present at the meeting which adopted the said resolution, and took part in its proceedings, but took no part in the proceedings when the resolution aforesaid was adopted, and that there is no proof that he was then present, but positive proof that he had no knowledge that the meeting had adopted any such resolution, and that the first knowledge that he had that the bank repudi-
126 ated the said payment at Pearisburg and looked to him for the payment of said notes was the service of process in this suit, the jury should find for the defendant..

The instruction tendered is also objectionable in deducing its conclusion from the alternative hypothesis that he had been informed by officers of the bank, when there is not a scintilla of evidence to support such an hypothesis, and, indeed, the other alternative hypothesis, that he was notified by said resolution, is wholly unsupported by the evidence. This instruction, as well as others, was ingeniously framed, and was calculated to confuse and mislead the jury, and was properly rejected by the court. There is no evidence in the cause of which the 11th instruction can be predicated, and as the court was not bound to enunciate abstract principles of law, whether the instruction correctly asserted the law or not, of which the court does not deem it proper to express an opinion, the court below did right to refuse the instruction.

If the court erred in not giving the 13th instruction, the plaintiff is not prejudiced by it, inasmuch as the finding of the jury and the judgment of the court are in conformity with it.

This disposes of all the plaintiff's fifteen instructions. The defendant only tendered one instruction, which was given by the court, and
127 we think properly, as is shown by the views already expressed by us. This disposes of all the instructions and of the plaintiff's third exception.

The court is of opinion that there is no error in the rulings of the court, as set out in the plaintiff's 1st and 2nd bills of exception; and upon the whole to affirm the judgment of the court below, with costs.

STATE OF VIRGINIA,
City of Richmond, to wit:

I, George L. Chushau, clerk of the supreme court of appeals of Virginia, do hereby certify that the foregoing is a true copy of the record of the said court in the case of The Bank of the Old Dominion v. McVeighs, lately pending and decided in said court.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at Richmond, this 20th day of December, A. D. 1877.

[SEAL.] GEO. L. CHUSHAN.

127½ (Indorsed:) Bank of Old Dom. vs. McVeighs. Copy of record.

128 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the supreme court of appeals of the State of Virginia, greeting:

Because in the record and proceeding as also in the rendition of the judgment of a plea which is in the said supreme court of appeals before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between James H. McVeigh and William N. McVeigh, appellants, and The Bank of the Old Dominion, appellee, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity; or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in
129 favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said The Bank of the Old Dominion, as by its complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the twenty-first day of December, in the year of our Lord one thousand eight hundred and seventy-seven.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Allowed by—

M. R. WAITE,
Chief Justice Sup. C't U. S.

A copy of the foregoing writ of error was filed in the cl'ks office of supreme court of appeals of V'a, Dec'r 22nd, 1877.

GEO. L. CHUSHAN,
Cl'k Sup. Court of Appeals of V'a.

130 Know all men by these presents, that we, H. O. Claughton, of Washington, D C., and Cha's E. Stuart, of Alexandria, State of Virginia, are held and firmly bound unto James H. McVeigh and William N. McVeigh in the full and just sum of two hundred and fifty dollars, to be paid to the said Ja's H. McVeigh & W'm N. McVeigh, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this twenty-first day of December, in the year of our Lord one thousand eight hundred and seventy seven.

Whereas, lately, at a supreme court of appeals of the State of Virginia, in a suit depending in said court, between Ja's H. McVeigh and W'm N. McVeigh, appellants, and the Bank of the Old Dominion, appellee, a judgment was rendered against the said The Bank of the Old Dominion, and the said The Bank of the Old Dominion having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said James H. McVeigh and W'm N. McVeigh, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such, that if the said The Bank of the Old Dominion shall prosecute its writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) H. O. CLAUGHTON. [L. S]
(") CHARLES E. STUART. [L. S.]

Sealed and delivered in presence of—
CHA'S B. BEALL.

Approved by—
(Signed) M. R. WAITE,
Chief Justice, &c.

The original bond, of which the within is a copy, was filed in the clk's office of the supreme court of appeals of Va., Dec'r 22nd, 1877.

GEO. L. CHRISTIANA.

131 The United States of America to James H. McVeigh and William N. McVeigh, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error, filed in the clerk's office of the supreme court of appeals of the State of Virginia, wherein the Bank of the Old Dominion is plaintiff in error and you are defendant' in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Su-

preme Court of the United States, this twenty-first day of December, in the year of our Lord one thousand eight hundred and seventy-seven.

M. R. WAITE,
Chief Justice Sup. C't U. S.

132 On this 21st day of December, in the year of our Lord one thousand eight hundred and seventy-seven, personally appeared Anthony W. Armstrong before me, the subscriber, a notary public for the corporation of Alexandria, in the State of Virginia, and makes oath that he delivered a true copy of the within citation to James H. McVeigh this day.

Sworn to and subscribed the 21st day of December, at the city aforesaid, A. D. 1877.

CHARLES E. STUART,
Notary Public.

133 The United States of America to James H. McVeigh and William N. McVeigh, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of appeals of the State of Virginia, wherein the Bank of the Old Dominion is plaintiff in error and you are defendant' in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this twenty-first day of December, in the year of our Lord one thousand eight hundred and seventy-seven.

(S'g'd) M. R. WAITE,
Chief Justice Sup. C't U. S.

On this 22d day of December, in the year of our Lord one thousand eight hundred and seventy-seven, personally appeared E. Hobzinger, deputy sergeant, for James M. Tyler, sergeant of the city of Richmond, before me, the subscriber, a notary public in and for the city of Richmond, in the State of Virginia, and makes oath that he delivered a true copy of the within citation to William N. McVeigh this day.

E. HOBSINGER, *D. S'g't,*
For JAMES M. TYLER,
S'g't City of Richmond.

Sworn to and subscribed the 22d day of December, A. D. 1877, at the city of Richmond aforesaid.

W. P. LAWTON,
N. P., City of Richmond, Va.

(Indorsement on cover:) No. 1036. The Bank of the Old Dominion, plaintiff in error, vs. James H. McVeigh and William N. McVeigh. Virginia sup. c't of appeals. Filed 11th January, 1878.

[redacted]

BANK OF [redacted]

634

JAMES H. and W. [redacted]

Brief of P. PHILLIPS and W. [redacted]

[redacted]

Supreme Court of the U. S.

BANK OF THE OLD DOMINION

vs.

JAMES H. and W. N. M'VEIGH.

No. 1036.

Brief of P. PHILLIPS and W. A. MAURY,

on Motion to Dismiss.

The plaintiff in error, on 22 July, 1871, brought an action of debt in the Corporation Court of Alexandria, against McVeigh & Son and W. N. McVeigh, on seven protested negotiable notes. p. 7.

The declaration describes these notes as executed by McVeigh and Son, and endorsed by W. N. McVeigh, and avers that when they severally became due they were presented for payment, and payment being refused, they were protested for non-payment, of which the "said W. N. McVeigh had due notice." pp. 8, 9, 10, 11.

To prove notice to the endorser, W. N. McVeigh, the protests were offered in evidence. pp. 13, 14, 15, 16, 17, 18, 19.

The first of these, p. 13, states that the notice was delivered to Ramsay at the Bank of the Old Dominion. The others state that notice was served by leaving it "at his dwelling in the hands of his white servant."

All of the protests allege that demand of payment was made at the bank, and the case shows that both the makers and indorser were at the dates of these protests within the confederate lines.

The dates of these several protests are as follows; 1 July, 22 July, 29 July, 12 August, 18 September, 9 September, and 17 August, 1861.

Eleven instructions were asked for by plaintiff, pp. 20, 21, 22; and twelve by defendants, pp. 22, 23, 24.

The jury found for the plaintiff the sum of $12,323, with interest from 1 January, 1866, and judgment was rendered accordingly.

On 30 November, 1875, the Supreme Court of Appeals reversed this judgment.

This reversal was based on the error contained in the second and third instructions of the plaintiff below.

And the judgment recites, that the Court is of the opinion that:

"The notices addressed to W. N. McVeigh, delivered to his white servant at his residence in Alexandria, and the notice delivered to Ramsay at the bank, under the facts and circumstances disclosed by the Record, were insufficient in law, and that in order to bind W. N. McVeigh as indorser, it was incumbent upon the defendant in error, within a reasonable time after communication was restored, between the parties by the termination of the war, to give the indorser notice of the non-payment and dishonor of the notes in controversy." p. 30.

The instructions referred to are as follows:

2d. If the jury shall believe from the evidence that the endorser, W. N. McVeigh, after the making and endorsing of the said notes, left the city of Alexandria, and was

absent from the city at the time of the maturity of said notes, and that notice of demand and protest was left by the Notary at the residence of said endorser, with a white servant of the endorser, such notice is sufficient in law, and the jury must find for the plaintiff, provided also they find that at the time of said notice the said McVeigh had a residence in Alexandria.

The 3d instruction is to the same effect, and need not be cited.

The counter proposition submitted by the defendant to the court was—

That if at the maturity of the notes Alexandria was in the occupation of the forces of the United States, and that McVeigh, the endorser, had some time prior to their maturity, *abandoned his residence in said city and gone within the Confederate lines with the knowledge of the plaintiff*, and resided there with his family until the close of the war, &c., &c., then the notices of protest left at the former place or business or former residence were insufficient, and they must find for him, unless within a reasonable time after the cessation of hostilities notice of dishonor was given to him." p. 22.

This instruction was refused, and the case being before the Supreme Court on the proposition of the plaintiff, and the counter proposition of the defendant, *the latter was affirmed to be the law, and the cause was remanded for a new trial.*

The question now submitted is, not whether there is error in this judgment, but whether it involves a *Federal question* so as to bring it within the revisory power of the court?

If upon the jurisdictional question the Court is at

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The question now submitted is, not whether there is error in this judgment, but whether it involves a *Federal question* so as to bring it within the revisory power of the court ?

If upon the jurisdictional question the Court is at

liberty to look to the opinion, upon which the judgment was based—it will be found at p. 32.

After referring to the character of the war and its effect in forbidding intercourse between the belligerents, the Court say: "It must be conceded, on reason and authority that the attempted service of notice on the endorser was inoperative. It was necessary that the holder should have notified him of the dishonor in a reasonable time after the impediment was renewed by the termination of the war."

"This conclusion is irresistible, unless it can be maintained that McVeigh by abandoning his residence, to keep within the confederate lines forfeited his right to notice, and made his contract, absolute." p. 36.

After citing authorities to show that in conflicts between States and sections, the citizen had the right to decide on which side his duty placed him, it is added:

"But the *decision of this question is not necessary to the decision of the cause*, for if in a political aspect the McVeighs had not the right of election, and were guilty of an offense in electing to go with the confederacy, for which they might be prosecuted, they cannot by reason thereof be held liable to this private party, beyond their undertaking in the contract." p. 37.

Again, it is said—"But, however W. N. McVeigh's removal may be regarded as a *political* question, *in that respect we have nothing to do with it.*"

This is the sum and substance of the opinion, and on these principles the new trial was ordered.

A petition for a rehearing was then addressed to the Court and refused. p. 40.

On the second trial the plaintiff asked for fourteen instructions, all involving the question of the sufficiency of

notice and McVeigh's change of residence—pp. 66, '7, '8, '9, 70, '1, '2.

All these were refused by the Court, and the following instruction, asked for by defendant, was given:

"If, on or about 30th May, 1861, and prior to the maturity of the notes, W. N. McVeigh, having previously sent his family, went himself within the Confederate lines with the intention of not returning to Alexandria during its occupation by the United States forces, and remained with them continuously within the Confederate lines throughout the whole period of the war and until the year 1874, and such absence at the maturity of said notes, respectively, was known, or, by the exercise of reasonable diligence, must have been known to the plaintiff, there is no such evidence of notice of dishonor in the case as is sufficient to fix his liability as endorser, and the jury must find for him as to all except the two notes of 17th May and 17th June, as to which notes they will find for the plaintiff."

Upon this charge there was a verdict for plaintiff as against James H. McVeigh for $12,823, with interest, and as against W. N. McVeigh for $806, with interest—p. 72.

The plaintiff then moved to set aside the verdict, for misdirection in the instruction prayed for by defendant, and for the refusal of the fourteen instructions prayed for by him.

The Court overruled this motion, "the facts proved, and the evidence offered in the cause, *being such and no other than the facts and evidence appearing in the bill of exceptions heretofore made a part of the record*"—p. 73.

The plaintiff then took the case a second time to the Supreme Court of Appeals, by exceptions to the refusal

to give his fourteen instructions, and the granting of the instruction prayed for by defendant.

On the 13th December, 1877, the Supreme Court decided there was no error in the judgment and affirmed the same—p. 74.

The writ of error is now sued out to reverse this judgment.

This second and final judgment recites that the affirmance is made for "reasons stated in writing and filed with the record."

These reasons are found in the opinion, at p. 74.

"Nothing can be clearer or more certain (say the Court) than that it was decided by the Court, in this cause, when it was here before, that the notarial protests and notices were insufficient in law to fix a liability on the endorser, Wm. N. McVeigh, and that it was incumbent on the Bank, within a reasonable time after communication was restored between the parties, by the termination of the war, to give the endorser notice of the non-payment and dishonor of the notes in controversy, which were endorsed by him for the accommodation of the makers."

The Court say further: "*The only question which has not been decided, and which is properly before the Court for its determination, is, has such notice been given to the endorser since the termination of the war, in a reasonable time, as was held to be requisite by the former judgment of the Court, in this cause?*"

The opinion thus proceeds:

"The points thus decided cannot be re-examined. After the cause was decided, the Bank moved the Court for a rehearing, which was overruled, and to allow the plaintiff here to litigate the points which have been decided would be to give him a rehearing now, which was

refused when asked for in time. There ought to be an end to the controversy."

"At the second trial, the plaintiff submitted a series of propositions in the shape of instructions. Of the fifteen thus tendered, the Court gave the fifteenth, and rejected the fourteen. All of them, from one to eight inclusive, and No. 14 controvert the foregoing decision of this Court, *not upon any new evidence which had any bearing upon the question, but upon grounds which were as cognizable by the Court then as now*, and were doubtless considered by the Court as far as they were entitled to consideration, or to have any influence in the formation of its opinion."

Commenting on these instructions, the Court say:

"The attempt to introduce political questions, and to create issues between this Court and the Federal Court, which could have no further influence upon the decision now than before, as no new fact has been brought into the record on those subjects, cannot be sustained. The Court before *refused to give any opinion on the constitutionality of the ordinance of secession*, as it does now, such question being irrelevant and not involved, as we think, in the decision of the cause. The decision of this Court would be the same, whether it held the said ordinance to be constitutional or unconstitutional. All these matters were foreign to the questions in issue."

We have thus presented a full statement of everything contained in the record necessary for the determination of the question whether this court has jurisdiction under sec. 709 R. S., and we submit with confidence that the record presents no Federal question for the determination of this Court.

The ordinary question of notice on negotiable instruments and its sufficiency, differs only from the one now

presented, in the circumstance that the indorser, who had once resided in Alexandria, had abandoned his residence *and gone into the Confederate lines.*

All that the court has decided on this state of facts is, that this did not deprive the endorser of the right to notice, and that while the impediment of war excused the holder from prompt notice, he was nevertheless bound to give notice within a reasonable time after the impediment was removed.

On the first trial no Federal question was raised by the plaintiff, and we submit that no Federal question was decided, or was necessarily involved in the first judgment of the Supreme Court.

The writ of error is directed to the *final judgment of the Court.*

But admitting, for the argument, that the Court may look into the *first* as well as to the final judgment, the absence of a Federal question is equally apparent in both.

To confer the revisory jurisdiction, it must be made to appear from the record that the judgment of the State Court draws in question.—

The validity of a *treaty*, or *statute* of, or an *authority* exercised under the United States and the decision was against their validity; or, that a *title*, *right*, *privilege*, or *immunity* was claimed under the Constitution, treaty, or statute of, or commission held, or authority exercised under the United States, and the decision was against the right, title, or privilege *specially set up or claimed.*

This we submit is the crucial test of the supervisory jurisdiction, and we may search the Record in vain to find any question which brings this case within the category, provided by the law.

It is true that on the second trial in the Corporation

Court the counsel for the plaintiff to save his case from the effect of the judgment of the Appellate Court, attempted to inject into the Record by numerous instructions, political questions arising out of the late war, such as the validity of the ordinance of secession, &c.

These instructions were properly rejected, as the judgment of the Supreme Court had limited by its mandate the inquiry into the single fact whether reasonable notice had been given after the termination of the war.

As to these instructions the Supreme Court say—"All these matters which were foreign to the questions in issue and all the argumentation, and enunciation of principles in the aforesaid instructions were offered in contravention of the decision of this Court, and for this cause, if there were no other, the Court below very properly refused to give them to the jury." p. 70.

We have with care given to the Court the exact state of this record, for we regard this statement as precluding the necessity of extended argument to show that it involves no federal question.

It is not sufficient that a federal question, was presented to the Court—it is the determination of that question that confers the jurisdiction.

In *Bolling* vs. *Lersner* (91 U. S., 594), in the Court below, the question was raised as to the constitutionality of the reconstruction acts. The objection being overruled the case was taken to the Supreme Court of Appeals where the judgment was affirmed.

On writ of error to this Court, the question of the constutionality of the reconstruction acts was admitted to be a federal question, but say the Court "the record does not show *that it was actually decided, or that its decision was necessary to the determination of the cause.*

The Court further say, the case "might have been disposed of in the State Court without deciding upon the constitutionality of these acts."

"But if we go further and look to the opinion of the Court, we find that the federal question was not decided, for all the judges decided that Willoughby was a judge *de facto*, and that his acts were valid in respect to the public and third parties, even though he might not be rightfully in office."

It would seem to be only necessary to refer to one other decision of this court for the purpose of settling this jurisdictional question.

In the case of *New York Life Insurance Co.*, vs. *Hendren* (92 U. S., 286), suit was brought in Virginia to recover on a policy. The defense was, that the policy was annulled by the war—the judgment below in favor of plaintiff, being affirmed in the Supreme Court of the State, was brought here on writ of error.

The Court say: "The record does not show that any Federal question was decided or necessarily involved in the judgment rendered by the court below. The pleadings, as well as the instructions, present questions of *general law alone*. The court was asked to decide as to the effect, under the general public law, of a state of sectional civil war, upon the contract of life insurance.

"The case having been presented for decision upon principles of general law alone, and it nowhere appearing that the Constitution, laws, treaties, or Executive proclamations were necessarily involved in the decision, we have no jurisdiction, and this we have often decided."

This decision is rendered more emphatic by the dissenting opinion of Mr. Justice BRADLEY, who maintained the jurisdiction on the ground that the laws which the citizens of the United States are to obey, in regard to

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intercourse with a nation or people with which they are at war, are the laws of the United States.

"The case (says he) of the dissolution of a contract on the ground of the existence of a war, is precisely a case within the meaning of the law which gives a writ of error to this court from the judgment of a State court, where a right or immunity is claimed under the Constitution of the United States or an authority exercised under the United States."

In the petition of the plaintiff for the writ of error to this court, he cites the cases of *Ludlow* vs. *Ramsay*, 12 Wall; *University* vs. *Finch*, 18 Wall; *McQuiddy* vs. *Ware*, 20 Wall., for the purpose of showing the jurisdiction.

By reference to these it will be seen that the facts of each vary materially from the character of the notice required in the present controversy. In all of them the question was as to the validity of *judicial proceedings*.

Here the question is as to the diligence required of the holder of negotiable security in giving notice of the dishonor.

In all there was *a debt* due by the party prior to his change of residence.

Here, there was a *remote contingent liability*, dependent on the payment by the maker of the notes.

But, on the matter of jurisdiction now under discussion, it is sufficient to say that no such question could arise in the cases cited, for in all of them the writ of error was to the Circuit Court of the United States.

The only other case referred to is that of *Matthews* vs. *McStea*, 91 U. S. This was a writ of error to the State court. The action was brought against Matthews as one of the firm of Brander, Chambles & Co., of New Orleans,

on an acceptance made by the firm in New Orleans, on 23d April, 1861. Matthews resided at that time in New York, and resisted payment on the ground that the proclamation of blockade of 19th April, 1861, was a prohibition to all commercial intercourse, and so operated to annul the copartnership on that date.

There is nothing in the report of the argument or the decision showing that any question as to jurisdiction was under consideration.

The case was decided against Matthews, who was plaintiff in error, on the ground that intercourse was not forbidden until the proclamation of the 16th August, 1861, made in conformity with the act of 13th July, 1861.

This case, therefore, presented distinctly a claim to exemption under an authority of the United States, to wit, the proclamation of 19th April, 1861; *and this is* specially referred to in the case of the New York Life Ins. Co., *supra*, where it is said by the Chief Justice: "This distinguishes the present case from *Matthews* vs. *McStea*, where jurisdiction was taken at the last term. The question was there presented whether the President's proclamation of 19th April, 1861, did not suspend, for the time being, the operation of that principle in the law of war which prohibited commercial intercourse between the adherents of the two contending powers."

It is thus seen that the case of McStea differs from the case now before us.

In the former, the effect of the proclamation was directly put in issue and decided.

In the latter, no proclamation or other Federal question was raised and decided.

Again, in the case before us, no other question was *necessary* to be decided by the Supreme Court in reversing the judgment of the Corporation Court, than that on

general principles of law as applicable to the circumstances of the case presented by the Record—the endorser who had abandoned his residence at Alexandria, did not by so doing forfeit his right to notice; and that the holder of the notes was bound to give notice within a reasonable time after the war had terminated.

The judgment hath this extent—no more.

If the plaintiff in error insist to the contrary, let him specifically point out the instruction prayed by him, when the case was first tried before the Corporation Court which in anywise raised a question as to the validity of a treaty, or statute of, an authority exercised under the United States; or let him show that he "specially set up and claimed" any title, right, privilege, or immunity under the Constitution, treaty, or statute of, or commission held, or authority exercised under the United States.

It will be seen, at p. 20, he prayed for *eleven instructions*, and that in no one of them is either of these Federal questions raised.

It was too late on the second trial, as ruled by the Supreme Court, to attempt to introduce on the same state of facts, by new instructions, Federal questions, and they were therefore properly refused.

We, therefore, respectfully submit that the writ of error must be dismissed, or that the judgment should be affirmed under the 6th Rule.

P. PHILLIPS,
W. A. MAURY,
for Defendant in Error.

Supreme Court of the U. S.

THE BANK OF THE OLD DOMINION

vs.

WM. N. McVEIGH.

Brief in Reply to the Plaintiff in Error.

In our opening brief we state that if this Court on the jurisdictional question could look beyond the judgment, and examine the opinion of the Court, it would be found that no Federal question was passed upon.

The plaintiff in error, failing to show that any Federal question was raised *by him* and decided, maintains that one was raised by *the defendant, below.* At page 4 of his brief he says:

"Instructions 1 and 3, moved by defendants (p. 22 of the record), claimed *immunity* because of the incidents and consequences of the war, as recognized by the proclamations of the President of the United States issued in April, 1861, and the withdrawal of Virginia from the Federal Union."

This statement is so constructed as to create the impression that the defendant below had, by his prayers, specially put in issue the effect of these proclamations, and the withdrawal of Virginia from the Federal Union.

It is only necessary to ask the reading of the instructions referred to, to show that the statement has no foundation in fact.

Failing to find a Federal question, either in the instructions or in the judgment of the appellate Court, the plaintiff in error relies on a discussion to be found in the *opinion* of the Court as to the character of the late war and the effect produced by it on the relations of parties occupying different sides of the belligerent line.

We deem it unnecessary to add anything to what we have already said, as showing that, even if the opinion could be referred to, the Court would find nothing but the assertion of principles of general public law.

We have already adverted to the authorities cited by plaintiff in error in his petition for the writ of error. The only case added by his brief is that of *Bond* vs. *Moore*, 93 U. S.

This, in all respects, is like that of *Matthews* vs. *McStae.*

In the latter case, Matthews, a resident of New York, maintained that the firm in New Orleans of which he was a member, was dissolved by the Proclamation of the 19th April, 1861.

In the former case, the plaintiff, who sued on a bill of exchange, attempted to excuse himself from not giving notice to the party sought to be charged, until after the Proclamation of the 13th June, 1865.

As to this, the Court say: "The only question in the record we are asked to consider is as to the effect of the Proclamation of 13th June, 1865. This, under *our ruling in the McStae case, is a Federal question.*"

It is not necessary to advert again to the distinction

between these cases, in which immunity was directly claimed under the Proclamations of the President, and the cases, such as the New York Life-Insurance Company, in which jurisdiction was denied because the judgment involved the decision of questions under the general public law.

We then come back to the judgment of the court, which is recited at p. 2 of our former brief.

The charge of the court given under this, and on which the verdict was found for defendant, is as follows:

"If on or about the 30th May, 1861, and prior to the maturity of the notes, W. N. McVeigh, having previously sent his family, went himself within the Confederate lines, with the intention of not returning to Alexandria during its occupation by the United States forces, and remained with them continuously within the Confederate lines through the whole period of the war and until the year 1874, and such absence at the maturity of said notes respectively *was known, or by the exercise of reasonable diligence must have been known to the plaintiff*, there is no such evidence of notice of dishonor in the case as is sufficient to fix his liability as endorser."

The affirmance of the judgment rendered on this verdict, given under this instruction, is the cause of complaint on the part of the plaintiff in error.

The question is not whether the State Court was right or wrong in the principle contained in this instruction, but whether the decision which was rendered involved the determination of a Federal question so as to confer the revisory jurisdiction on this Court as provided by sec. 709, R. S.

How is it possible to bring this case within the limitations of this section?

The court has jurisdiction only in three classes of cases:

First, where there is drawn in question the validity of a treaty, statute, or authority of the United States, and the decision is against their validity.

Second, where there is drawn in question the validity of a statute or authority exercised under a State on the ground of repugnancy to the Constitution of the United States, &c., and the decision is in favor of their validity.

Third, where any title, right, privilege, or immunity under the *Constitution*, *treaty*, *statute*, *commission*, *or authority* exercised under the United States, is *specially set up* and claimed by either party, and the decision is against the title, right, &c.

To bring a State Court under the supervisory power of the Federal tribunal, it must be shown that its decision falls *strictly* within one of these three categories. No doubtful construction is allowable. This is elementary law.

Was there any treaty, statute, or authority of the United States held to be involved? None. Was any statute or authority of a State, assailed for unconstitutionality, held valid? None.

There remains then the sole enquiry under the third class.

What right or immunity was *specially set up and claimed*, either under the *constitution*, or *treaty*, or *statute*, &c., of the United States, by the plaintiff in error, and was denied to him?

We have already referred to the instructions prayed by plaintiff in error, which show no such claim specially set up by him.

Certainly no such right or immunity was specially set up by McVeigh and denied to him, and if there were such claim and denial, he is not here as complainant.

The whole matter then is, that the State Court has decided that McVeigh having left his residence at Alexandria, and that this was known to the plaintiff, or by reasonable diligence must have been known to him, the notice given was insufficient.

If this involves a Federal question we are unable to perceive it.

The plaintiff in error has on this motion entered upon what he terms the merits of the case. This is not in order.

He attempts to justify this irregularity by the statement, at p. 23, that "the counsel for defendants in error have asked the Court to pass upon the merits of the case at this time."

Our motion only denies that there is a Federal question, and, for this reason, asks a dismissal of the case, or, in the alternative, under 6th Rule, for an affirmance, on the ground that if there be a Federal question, it is frivolous.

There is, therefore, no justification for the assertion that we have asked the court to pass upon the merits of the case.

The reference, therefore, to the relation of McVeigh to the bank is wholly out of place and irrelevant.

If this alleged relation was such as to charge McVeigh as endorser without notice of non-payment, the court below was the place to raise that question. It cannot have any effect upon the decision of this court, however strongly it may be desired or designed.

P. PHILLIPS,
W. A. MAURY,
for Deft. in Error.

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Supreme Court United States.

OCTOBER TERM, 1878.—No. 634.

THE BANK OF THE OLD DOMINION

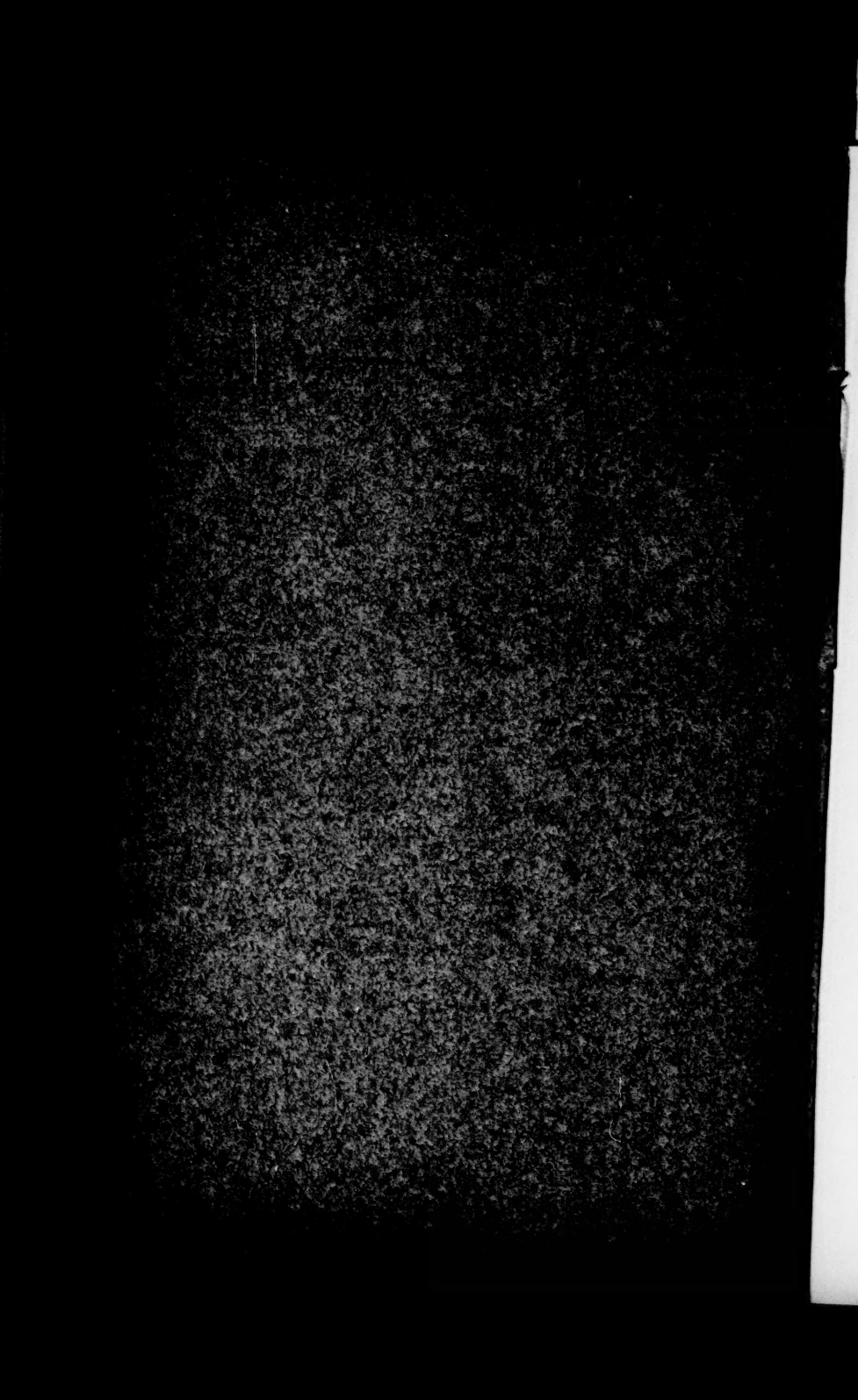
vs.

JAMES. H. and WILLIAM N. McVEIGH.

Writ of Error to Supreme Court of Appeals of Virginia.

CONWAY ROBINSON,
P. PHILLIPS and W. A. MAURY,
For Defendant in Error.

R. O. Polkinhorn, Printer.



Supreme Court United States.

OCTOBER TERM, 1878.—No. 634.

THE BANK OF THE OLD DOMINION

vs.

JAMES. H. and WILLIAM N. McVEIGH.

Writ of Error to Supreme Court of Appeals of Virginia.

Motion to dismiss Writ of Error under Revised Statutes, Section 709.

According to Sections 709 and 1008, and the decisions thereupon, there is to be no re-examination and reversal by the Supreme Court on writ of error unless the writ of error is to a *final* judgment, and is brought within *two years* after the entry of such judgment. In the present case the writ of error (p. 80) is not to a *final* judgment, and is not brought within *two years* after the entry of such judgment. The writ of error is dated the 21st of December, 1877, and the judgment recited therein is of a plea in the Supreme Court of Appeals in a "suit between James H. McVeigh and William N. McVeigh, appellants, and the Bank of the Old Dominion, appellee."

The record shows no judgment in said Supreme Court of Appeals between said parties as *appellants* and *appellee;* but a judgment in said court upon a writ of error between James H. McVeigh and William N. McVeigh, plaintiffs in error, and the Bank of the Old Dominion, defendant in error (p. 9). This judgment was entered on the 30th of November, 1875 (p. 30), being more than *two years* before the date of the present writ of error (Dec. 21, 1877), and this judgment was not *final.* As to that which was a *final* judgment, to wit, the judgment of the 13th of December, 1877, in said court (p. 74), it is to be observed that it was upon a writ of error between the Bank of the Old Dominion, plaintiff in error, and James H. McVeigh and William N. McVeigh, defendants in error (p. 41).

As the plaintiff in error may apply for, and the court may (in its discretion and upon such terms as it may deem just) allow an amendment of the writ of error, it is proper to inquire whether, instead of amending the same, it should not be dismissed for want of jurisdiction. We insist that no matter when or how it may be amended, it must still be dismissed for want of jurisdiction.

We begin with "the judgment of said Court of Appeals at the hearing of the first writ of error," that being relied on by the counsel for plaintiff in error (on p. 2 of his brief) as "the judgment in which the questions which give jurisdiction to this court were more particularly and necessarily raised and decided." We insist that even if, instead of that judgment being interlocutory, it had been final and a writ of error had been brought thereto immediately after its date, it could not be sustained; for there was not drawn in question or claimed any of those things

which are necessary to sustain a writ of error under Section 709. It cannot be sustained against the record when that record is not only the highest and the best evidence of the fact—but is in accordance with what the plaintiff's counsel does himself state (on page 7 of his brief) as the fact—that "*at the first trial the plaintiff did all that could be done to keep the case clear of Federal questions.*"

To entitle a party to the exercise of jurisdiction under Section 709, upon the ground of title, right, privilege, or immunity under the Constitution, he must show by the record that such title, right, privilege, or immunity was set up or claimed *by him* in the court below; and that the decision of that court was *against* what he so set up or claimed. Such is the language of the act of Congress, and the decisions of this court are according thereto.

The case of *Montgomery* v. *Hernandez*, 12 Wheat., 132, is recognized by this court in 1849 as holding that it has no jurisdiction under the 25th section of the act of 1789 unless the title, right, privilege, or exemption "be *specially set up* by the party claiming it in the State court and the decision be *against* the same." *Smith* v. *Hunter*, *&c.*, 7 How., 743. "If he omits to claim it in the State court, there is no reason for permitting him to harass the adverse party by a writ of error to this court." *Grand Gulf R. R. and Banking Co., &c.*, v. *Marshall*, 12 How., 167. Questions not decided in the State court, because *not raised and presented by the complaining party*, will not be re-examined in this court. *Hamilton Co.* v. *Massachusetts*, 6 Wallace, 636. Title, right, privilege, exemption, or immunity will not avail a party before the Supreme Court unless the same has been specially set up and claimed by that party in the court below for himself. *Long, &c.*, v. *Converse, &c.*, 91 U. S. (1 Otto), 105.

In the present case the record does not show that any constitutional question "was raised by the plaintiff or

decided by the court." *Coons* v. *Gallagher*, 15 Peters., 20. The claim of the plaintiff at the first trial was not of title, right, privilege, or immunity under the Constitution, but merely the application of such principles as were insisted on by his second and third instructions (pp. 20, 21 of the record and pp. 2, 3 of the brief of my associates). What was insisted on by those instructions is on p. 5 of the brief for plaintiff in error correctly stated thus:

"The plaintiff insisted, as shown by instructions 2 and 3 moved by the plaintiff (and held by the Supreme Court of Appeals to have been erroneously granted) "that it was *a case exclusively of commercial law.*"

The highest court of the State passed on this "*case exclusively of commercial law.*" Its judgment is that the "commercial law" is not as supposed by the plaintiff in error and by the corporation court, but that there was error in giving the second and third instructions so moved (p. 30). Whether or no the highest court of the State was mistaken as to "*commercial law*" is not a matter which can be reviewed by this court under the section that was 25 of the judicial act of 1789 and is now 709 of the Revised Statutes.

"To give this court appellate jurisdiction, two things should have occurred and be apparent on the record: First, that some one of the questions stated in the section did arise in the court below; and, secondly, that a decision was actually made thereon by the same court in the manner required by the section. If both of these do not appear on the record, the appellate jurisdiction fails." *Crowell* v. *Randell*, 10 Peters., 392. "It is not sufficient to show that a question might have arisen or been applicable to the case, unless it is further shown on the record that it did arise and was applied by the State court to the case." *Id.*, 398.

This is a leading case, and the decision therein has been repeatedly recognized and acted upon. *McKinney, &c.*, v. *Carroll*, 12 Peters., 70. Subsequently to that case of *Crowell* v. *Randell* it was stated from the bench that

the court in that case "had revised all the cases, and had laid down the law as they wished it should be universally understood." *Choteau* v. *Marguerite*, 12 Peters., 510.

Now, that case of *Crowell* v. *Randell* has upon the present a pointed bearing; for there the court distinguished between a case in which, in the court below, title, right, privilege, or immunity under the Constitution was specially set up or claimed by the plaintiff in error, and a case where, so far as the court "can perceive from the record, *the judgment had no reference to any constitutional question whatsoever, but proceeded upon general principles of law.*" *Id.*, 399.

That "the judgment had no reference to any constitutional question whatsoever, but proceeded upon general principles of law," is as plain in the present case as it was in the case just cited, or in any of the class embracing *Bethell* v. *Demaret*, 10 Wallace, 537; *Delmas* v. *Ins. Co.*, 14 Wallace, 666; and *Tarver* v. *Keach*, 15 *Id.*, 67. A State court decided that "upon principles of general law a trustee cannot be held responsible to his *cestui que trust* for the loss of a trust fund, if the loss has not been occasioned by his own laches or bad faith." Upon those principles the State court decided "that the delivery of the trust fund in this case by the defendant into the hands of the Confederate authorities, under an order which he dared not disobey, excused him from liability to the plaintiff." The Supreme Court of the U. S., at Oct. term 1875, said, "This is not a Federal question," and dismissed the writ of error. *Rockhold* v. *Rockhold, &c.*, 92 U. S. (2 Otto), 129. In such cases—wherein the decision of the State court is "upon principles of general law,"— it is considered that the Federal courts and the State courts, each within its own sphere, deciding on its own judgment, are not amenable to each other. 14 Wallace, 666.

To much of the argument of the other side we oppose the language of STORY, J. in delivering the opinion of this court in 1839:

"In the exercise of the appellate jurisdiction of this court over the decisions of State courts, we are not at liberty to resort to forced inferences and conjectural reasonings, or possible or even probable suppositions of the points raised and actually decided by those courts." *Ocean Ins. Co.* v. *Polleys*, 13 Peters, 164.

What has been said on p. 4, of the brief of my associates, seems quite enough, for the question mentioned in the opinion of the court, p. 37, (of record) as "*not necessary to the decision of the cause.*"

Since, as well as before the act of 1867 and the revised statutes, it has been considered by this court that to ascertain whether a certain question was actually raised, and decided by the State court, "the record of the case, its pleadings, bills of exceptions, judgment, evidence, in short its record, whether it be a case in law or equity, must be the chief foundation of the enquiry." *Murdock* v. *City of Memphis*, 20 Wallace, 634. "If the record shows upon its face that a Federal question was not necessarily involved and does not show that one was raised," the court "will not go outside of it to the opinion or elsewhere to ascertain whether one was in fact decided." *Moore* v. *Mississippi*, 21 Wallace, 638; *Edwards* v. *Elliott, &c*, *Id.* 532; *McManus* v. *O'Sullivan*, 91 U. S. (1 Otto.) 578.

The two cases on which the other side seem mainly to rely do not depart from the general rule, before mentioned, as to the record of the case and what it must show to have been set up and claimed.

In the first of the two "all the drafts came before maturity into the hands of one McStea, and he brought suit in the court below on the whole of them. Matthews alone appeared. *He set up the defense that at the time of the acceptances war had been declared and existed between that part of the United States in which he resided and that in which his*

other partners resided, by virtue of which the partnership had been dissolved before these acceptances were made, and that the contracts as to him were therefore void. The court decided against him as to the acceptance made on the 23d of April, and in his favor as to the others. He then took the case into the Court of Appeals; and there, upon the acceptance of the 2d of April, for $8,056, *raised the same question as before* and no other; *contending that the proclamations of blockade of the* 15 *and* 19 *of April by the President*, had the *effect to dissolve the partnership*, and that by reason of them the act of acceptance was void as to him."

This question, which *plaintiff in error* thus *raised on the record* as to the sufficiency of the acts of the President to inaugurate a war which would render the contract invalid, being decided against him, this court exercised jurisdiction. *Matthews* v. *McStea*, 20 Wallace, 646; and considered that question. S. C. 91, U. S. (1 Otto) 7. If it be argued that like the defense of Matthews there was that of McVeigh here, the plain answer is, that whatever might be thought if the decision of the court below had been against McVeigh, and the writ of error brought by him, there can be no writ of error by the Bank of the Old Dominion which did not set up any such ground, but on the contrary claimed against such defense.

The other of the two cases on which the other side seems mainly to rely was an action in Tennessee against the endorser of a bill drawn Feb. 13, 1862, upon a firm in New Orleans and payable four months after date; the plaintiffs in their declaration averred that the obstructions of war and the interruption of intercourse between their place of residence and that of the drawers prevented presentation of the bill (in New Orleans) earlier than June 20, 1865, when payment being refused, it was protested. Upon *the pleadings* and the *instruction asked*, there was a question as to the effect of the President's proclamation of June 13, 1865, (13 Stat. 763); this, according to the ruling in *Matthews* v. *McStea*, was held to be a Federal question. *Bond, &c.* v. *Moore*, 93 U. S. (3 Otto) 394.

There is a plain and manifest distinction between these two cases and one wherein the record does *not* show that title, right, privilege or immunity was claimed under the Constitution by the plaintiff in error; and does not show a decision *against* the same.

In 1873 was the case of *a judgment annulled* in Louisiana by the decree of a State court, on the ground that the transaction between the two parties "was had while one resided within the Federal and the other within the Confederate lines." FIELD, J. in delivering the opinion of this court said: "The evidence in the record leads us to doubt whether the transactions detailed, properly fall within the rule of public law or the proclamation of the President, forbidding commercial intercourse with the enemy. But the ruling of the State court in these particulars, however erroneous, is not the subject of review by us. It presents no Federal question for our examination." *Stevenson* v. *Williams*, 19 Wallace, 576.

Strongly in point is the case from Virginia, cited on page 10 of the brief of my associates; where the action was on a policy of life insurance.

WAITE C. J. said: "The *pleadings* as well as *the instructions* asked and refused, present questions of *general law* alone. The court was asked to decide as to the effect, *under the general public law* of a state *of sectional civil war*, upon the contract of life insurance, which was the subject of the action. It was not contended, so far as we can discover, that the general laws of war, as recognized by the law of nations, applicable to this case, were, in any respect, modified or suspended by the Constitution, laws, treaties, or executive proclamations of the U. S. '—"*We act upon questions actually presented to the court below*; not upon such as might have been presented or brought into the case but were not. The case, therefore, having been presented to the court below for decision upon principles of *general law* alone, and it nowhere appearing that the Constitution, laws, treaties, or executive proclamations of the United States were necessarily involved in the decision, we have no jurisdiction. We have often so decided." *N. Y. Life Ins. Co.* v. *Hendren*, 92 U. S. (2 Otto) 286.

At the first trial of the present case there was no decision against anything set up or claimed by the plaintiff in error except in refusing some of the "instructions asked by plaintiff" (p. 20 to 21), to wit: the 2d, 3d, 5th, 8th, 9th, and 11th; and by none of these was any "title, right, privilege or immunity" claimed, under the Constitution. It plainly appears that the plaintiff in error, by the instructions which he asked, and the corporation court by the instructions which it gave, and the highest court of the State by its judgment thereupon, pp. 30, 31, had "*no reference to any constitutional question whatsoever, but proceeded upon general principles of law.*"

If the court, besides looking at "instructions asked by plaintiff," shall look at such of the "instructions asked by defendants" (p. 22 to 24), as were given, to wit: the 1st, 2d, 3d, 4th, 5th, 8th, 9th, and 10th, it will be found that of these instructions the 8th, 9th and 10th have nothing to do with the war, but involve merely questions of agency or authority; and that the fourth and fifth were given, not as asked, but (as stated on p. 29) with a modification. The 4th, as so modified, reads as follows:

"If the jury shall believe from the evidence aforesaid that on and after the 7 day of June, 1861, the said James H. McVeigh and Wm. N. McVeigh were residing within territory held in the firm occupation of the forces of the Confederate States and so continued to reside until the close of the war, and that the said plaintiff had his domicil from said date, and ever since, in the city of Alexandria, held in the firm occupation of the forces of the United States during the war, then that the two notes sued on, one bearing date the 8th of June, 1861, and the other June 17, 1861, are illegal and void, and they must on these notes, find for the defendants, unless they also find that said notes were given in renewal of notes made before the war, and by an agent acting under authority conferred before the war."

The 5th is also as to the illegality of said notes of June 8 and 17, "made by the defendants whilst residing within the lines occupied and firmly held by the forces of the Confederate States;" and (as may be seen on p. 29) is on the like principle as the 4th.

The 1st, 2d, and 3d of the instructions asked by defendants (pp. 22, 23) are merely as to the notice of non-payment and dishonor contained in the notarial certificate of protest (pp. 13 to 19,) the 3d being as follows:

"If the jury shall believe from the evidence aforesaid that the only notice of the non-payment and dishonour of the notes sued on given to Wm. N. McVeigh was the notice contained in the notarial certificate of protest, then said notice was invalid and inoperative to bind said Wm. N. McVeigh, and they must find for him."

The 1st and 2d of the instructions asked by defendants are upon the general principle of law, recognized by *Marshall* C. J. in 1822, that although after the commencement of hostilities notice of dishonor was not to be required, yet it "ought to be given within a reasonable time after the removal of the impediment." *Hopkirk* v. *Page*, 2 Brock., 34. The second (p. 22) is as follows:

"That if by reason of the existence of war, whether foreign or civil the holder of negotiable notes residing within territory in the firm occupation of one of the belligerents, and the endorser on said notes residing within the territory of the other belligerent, the holder of such negotiable notes is excused from giving notice of protest and dishonour to said endorser during the continuance of the war; but on the cessation of hostilities, he is bound, within a reasonable time after the removal of the impediments which excused him from so doing, to give notice to the endorser."

The case is completely covered by the decision of this court in *N. Y. Life Ins. Co.* v. *Hendren*. "The pleadings, as well as the instructions asked and refused" (or given), "present questions of *general law* alone. The court was asked to decide under the *general public law*."—"It was not contended that the general law of war, as recognized by the law of nations, applicable to this case, was, in any respect, modified or suspended by the Constitution, laws, treaties, or executive proclamations of the U. S."—"The case, having been presented to the court below for decision, upon principles of *general law* alone, and it no-

where appearing that the Constitution, laws, treaties, or executive proclamations of the United States were necessarily involved in the decision," the Supreme Court has "no jurisdiction."

This court has nothing to do with the motion for a new trial on the ground that the verdict was contrary to law and evidence: for, 1, that motion was not by the present plaintiff in error, but by the other party; and, 2, no matter by what party it was, this court has no jurisdiction to deal with it. Although the Supreme Court of Appeals of the State did, according to the State practice, examine facts and circumstances disclosed in the bill of exceptions to the opinion refusing the motion for a new trial, and did, in its discretion, grant a new trial, yet with that motion and its result the Supreme Court of the United States has nothing to do. In respect to a new trial, a writ of error under Section 709 can have only the same effect as if the judgment complained of had been rendered or passed in a court of the United States. It is well settled that the granting or overruling a motion for a new trial in a Circuit Court of the United States rests wholly in the discretion of that court, and cannot be made the subject of revision by the Supreme Court. *Warner* v. *Norton*, 20 How., 448; *Ins. Co.* v. *Dutton*, 13 Wallace, 603; *Mullhall* v. *Keenan*, 18 Id., 343. The same rule is applied where the writ of error is to the judgment of the highest court of a State. *Kerr* v. *Clampitt*, 95 U. S. (5 Otto), 188.

This court has to consider that, by the judgment of Nov. 30, 1875, pp. 36, 37, the highest court of the State did right in setting aside the verdict of the jury and granting a new trial, and in remanding the cause for further proceedings.

So, likewise, as to the judgment of April 20, 1876, pp. 54, 55, and the affirmance thereof by the judgment of Dec. 13, 1877, p. 74. It must be considered that thereby the State court did right in overruling the motion to set aside the verdict and grant a new trial.

Nor is a writ of error to the final judgment authorized by anything else that occurred after the judgment of Nov. 30, 1875. "Questions of general law alone" are presented in "plaintiff's first bill of exceptions, p. 55 to 63, and in "plaintiff's second bill of exceptions," p. 63 to 66. His third bill of exceptions (p. 66 to 72) shows that in some of the instructions asked (9, 10, 11, 13) the questions presented were of agency, or otherwise depending on general law, and that in all of the others (except the 15th, which was granted), the grounds thereof, although not relied on at the previous trial in the same way, were yet as to a matter in respect to which the highest court of the State had given to the parties an opportunity of being heard, and had heard them, and after such hearing had definitively adjudged on the 30th of November, 1875 (pp. 30, 31), to wit, that the notices, p. 15 to 19, were "insufficient in law, and that, in order to bind the said William N. McVeigh as endorser, it was incumbent upon the defendant in error, within a reasonable time after communication was restored between the parties by the termination of the war, to give the said endorser notice of the non-payment and dishonor of the notes in controversy, which were endorsed by him for the accommodation of the makers." Though the highest court of the State had thus definitively adjudged the insufficiency of the notices, p. 15 to 19, and though the only matter which remained to be tried was whether "within a reasonable time after communication was restored between the parties by the termination of the war" notice was given the said endorser of the non-payment and dishonor, yet it seems that the counsel for the

plaintiff desired at the trial of *this matter* to have the jury instructed as to what was altogether irrelevant, to wit, the state of things *before* communication was restored between the parties by the termination of the war. Thereby he attempted to raise a Federal question, but the instructions which he asked were properly refused. His petition to judges of the highest court of the State has immediately before the prayer for a writ of error (pp. 47, 48) this sentence: "These new facts, it is submitted, make up a case so different from that which was presented by the record in the former case that *it is scarcely necessary to consider the Federal questions raised in this record.*"

The judges of the highest court of the State concurred that the decision of a Federal question was not necessary to the determination of the cause; they decided the cause and gave their judgment without deciding any Federal question; and the case now before this court is governed by what has been often held before:

"It is not enough that a Federal question was argued or presented to the highest court of the State for decision. It must appear that its decision was necessary to the determination of the cause, and that it was actually decided, or that the judgment as rendered could not have been given without deciding it." *Brown* v. *Atwell*, 92 U. S. (2 Otto) 329.

In every aspect the writ of error awarded in the present case should be dismissed.

CONWAY ROBINSON,

WITH

P. PHILLIPS and W. A. MAURY,

For Defendant in Error.

OCTOBER, 1878.

Supreme Court of the U. S.

THE BANK OF THE OLD DOMINION

vs.

JAS. H. McVEIGH and WM. N. McVEIGH.

NO. 1036.

Brief of H. O. CLAUGHTON,

Attorney for Plaintiff in Error

R. O. POLKINHORN, PRINTER WASHINGTON, D. C.

Supreme Court of the U. S.

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Attorney for Plaintiff in Error

On motion to Dismiss.

The statement made in the brief of the learned counsel for the defendants in error, as to the nature and purpose of the writ of error, indicates a misapprehension of the case.

The brief states that the writ of error is to the judgment of the Supreme Court of Appeals of Virginia, rendered in the appeal of the Bank of the Old Dominion.

Although the writ of error is to that judgment, inasmuch as that judgment is a necessary part of the whole case, yet the question of the jurisdiction of this court does not entirely, if at all, depend upon the nature of that judgment.

It is unquestionably true that the instruction given by the Corporation Court, at the request of defendant in error on the new trial, and the giving of which was affirmed by the Court of Appeals, did involve Federal questions, but the plaintiff in error does not rely upon this point alone.

At the first trial before the Corporation Court, and at the hearing of the first writ of error before the Court of Ap-

peals, the question was, as to the sufficiency of the notices of dishonor and protest, which were left at the residence and place of business of the endorser at the maturity of the notes.

The only questions upon the merits decided by the said Court of Appeals at the hearing of the second writ of error was, that the evidence offered by the plaintiff at the second trial to prove notice after the close of the war was insufficient, and that the Corporation Court did not err in refusing to give the instructions prayed by the plaintiff, nor in giving that prayed by the defendant.

The judgment of said Court of Appeals at the hearing of the first writ of error, is the judgment in which the questions which give jurisdiction to this court were more particularly and necessarily raised and decided.

It is true that at the new trial before the Corporation Court, the plaintiff, hoping that the Supreme Court of Appeals would hold (as the Supreme Court of Tennesee has since held—9 Heiskell, 632,) that an Appellate Court is not bound at the hearing of a second writ of error by the opinion as to the law expressed at the first hearing, when it merely reversed the judgment of the court below and remanded the case for a new trial—moved a series of instructions involving *one* of the Federal questions decided by said Supreme Court at the hearing of the first writ of error.

But the said court at the second hearing decided that the only question then before the Court was the sufficiency of the evidence offered by the plaintiff on the new trial, to prove notice within a reasonable time *after* the close of the war.

But the said Supreme Court, notwithstanding it did so hold, passed judgment not only upon the instruction given for the defendant at the new trial, but also upon the instructions prayed by the plaintiff and refused by the Corporation Court, although all of these instructions involved

some of the Federal questions decided by the court at the hearing of the first writ of error.

The instruction given for the defendants, and the giving of which was affirmed by the Supreme Court of Appeals of Virginia, was almost identical in substance with the first instruction given for the defendants at the first trial.

The said Court of Appeals approved of the giving of the said instruction for the defendants, but held "all the argumentation and enunciation of principles in the fourteen instructions prayed by the plaintiff was in contravention of the decision of the court, and for this cause, if there were none other, the court below very properly refused to give them to the jury."

Is this not a concession that at the hearing of the first writ of error the court did decide the questions involved in these instructions? If this was not so, how could these instructions have been in contravention of that decision, and for this cause properly refused by the Corporation Court.

But has this Honorable Court jurisdiction of this case?

This was an action of debt against the makers and endorsers of seven negotiable notes, which were dishonored, protested, and notices of protest in due form left as to six of the notes at the residence of the endorser in Alexandria with his white servant in charge of said residence; and as to the other note left at the Bank of the Old Dominion, which was the endorser's place of business.

The defence relied upon by the endorser was want of notice.

It is apparent that such defence could not be sustained upon the well-established principles of the law-merchant, and the record shows that such grounds were not relied on.

Instructions 1 and 3 moved by the defendants (page 22 of the record) show that the endorser claimed immunity from the liability fixed upon him by the notices of dishonor given as above stated, and claimed that immunity because of the incidents and consequences of the war, as recognized by the proclamations of the President of the United States issued in April, 1861, and the *withdrawal* of Virginia from the Federal Union.

The immunity so claimed may be stated in the following propositions:

1. That from the date of said proclamations it was unlawful for the holder of the notes to demand, or the makers or endorser of the notes to pay them.

2. That from the date of said proclamations all intercourse between the hostile sections was prohibited.

3. That the legal effect of the war thus recognized by said proclamations, upon the contract of endorsement, was to suspend its operation by making it unlawful for the holder to give or the endorser to receive notice of dishonor and protest.

4. That the legal effect of said proclamations was to make it unlawful for the endorser to be at his residence or place of business in Alexandria when the notices were left there for him, or for the holder to send him notice, even if the Bank had known where he was, and had pleased to send the notice by a special messenger.

5. That the said proclamations having recognized the existence of war and the belligerent rights of the Confederate Government, that the endorser had the right to elect as to which Government he would adhere, and having elected to adhere to the Confederate Government, it was unlawful for him to remain at, or return to, his residence in Alexandria so long as the city was in the possession of the Federal authorities; and that his absence under these cir-

cumstances imposed upon the holder the obligation to give him notice after the close of the war.

6. That said proclamations inaugurated and recognized a war, the incidents and consequences of which were the same as those which result from a war *inter gentes.*

These and other Federal questions were directly raised by the instructions moved by the defendants in error.

The issue was clearly made—the plaintiff insisted, as shown by instructions 2 and 3 moved by the plaintiff (and held by the Supreme Court of Appeals to have been erroneously granted), that it was a case exclusively of commercial law—the defendants claimed that the rules of commercial law were controlled by the Federal questions involved in the instructions 1 and 3 moved by them, which instructions were held by the said Court of Appeals to be law.

The learned counsel for the defendants in error fall into two errors respecting the first instruction moved by the defendants at the first trial.

They state that this instruction was refused. It was not refused but granted. The jury rendered a verdict in favor of the plaintiff notwithstanding the instruction, because they found that the endorser had not abandoned his residence in Alexandria when the notes were respectively protested.

The nature of the instruction is also misapprended, as appears from the fact that the brief in attempting to quote the instruction omits those portions of it which involve Federal questions.

The instruction is as follows (page 22):

"If the jury shall believe from the evidence aforesaid that at the maturity and dishonor of the notes sued on, the city of Alexandria and its vicinity were in the *occupation of the forces of the United States*, that William N. McVeigh,

the endorser on said notes, had sometime prior to said maturity abandoned his residence in said city and had gone within the lines of the forces of the Confederate States, with the knowledge of the plaintiff, and resided therein with his family until the close of the war, *and that hostilities were, at the date of said maturity and dishonor, flagrant between the United States and the Confederate States*, then that the notices of the protest of said notes sued on, left either at the former place of business or at the former residence of Wm. N. McVeigh, in the city of Alexandria, were insufficient to bind him, unless they should believe that the plaintiff, within a reasonable time after the cessation of hostilities, gave notice of the dishonor of said notes to Wm. N. McVeigh."

The only notes now involved in this controversy are those which were respectively protested on the 1st, 22d and 29th of July, 12th of August and 9th of September; those protested on the 17th day of August and 18th day of September having been discounted for the endorser, it is admitted that he is liable without notice.

It will be seen that only one of the notes, to wit, that protested on the 9th day of September, matured after the issue of the proclamation of August the 16th, 1861.

Before proceeding to show from an examination of the judgment of the court and the opinion which is, by reference, made a part of the judgment, what questions were decided by the Supreme Court of Virginia and upon which its judgment was based, a brief reference will be made to some of the positions assumed by the learned counsel for the defendants in error, in opposition to the jurisdiction of this Honorable Court.

These may be embraced under two propositions:

1. That this court has no jurisdiction, because the *plain-*

tiff in error did not raise any Federal question at the first trial. (Page 13 of brief.)

2. That it is not sufficient that a Federal question was presented to the court, but it is the determination of that question that confers jurisdiction. (Page 9 of brief.)

It is not supposed that the first proposition is seriously asserted. The Federal question may be presented as well by the defendant as the plaintiff. At the first trial the plaintiff did all that could be done to keep the case clear of Federal questions. These questions were presented by the defendant. But after the Supreme Court of Appeals had, (as we think and as the dissenting justices thought), decided the first writ of error upon Federal grounds, the plaintiff deemed it best, at the second trial, to make one of these Federal questions distinctly prominent.

In reference to the second proposition above referred to, it is conceded to be law. Indeed it might be more broadly stated in the following terms, to wit: It is the determination of the Federal question *by the court* that confers jurisdiction, and though neither plaintiff nor defendant relied upon a Federal question, yet, if the court based its judgment upon the decision of such question, *this* confers jurisdiction upon this Honorable Court.

In the first place then, did the instructions moved by the defendants present a Federal question?

In order to distinguish this case from *Matthews* vs. *McStea* and liken it to *Bolling* vs. *Lersner* and *Insurance Company* vs. *Hendren*, much stress is laid upon the fact that no mention is made in the pleadings, evidence, or instructions of the proclamations of the President.

But is there anything in the report of the case of *Mat-*

thews vs. *McStea* which shows that reference was especially made to these proclamations, except in the opinion of the court? The effect of these proclamations was doubtless discussed in the argument of that case, as in this.

This precise question was presented in both cases—Did the existence of the war prior to the proclamation of August 16th, 1861, prohibit commercial intercourse between the hostile sections, so as to prevent the making or suspend the execution of commercial contracts?

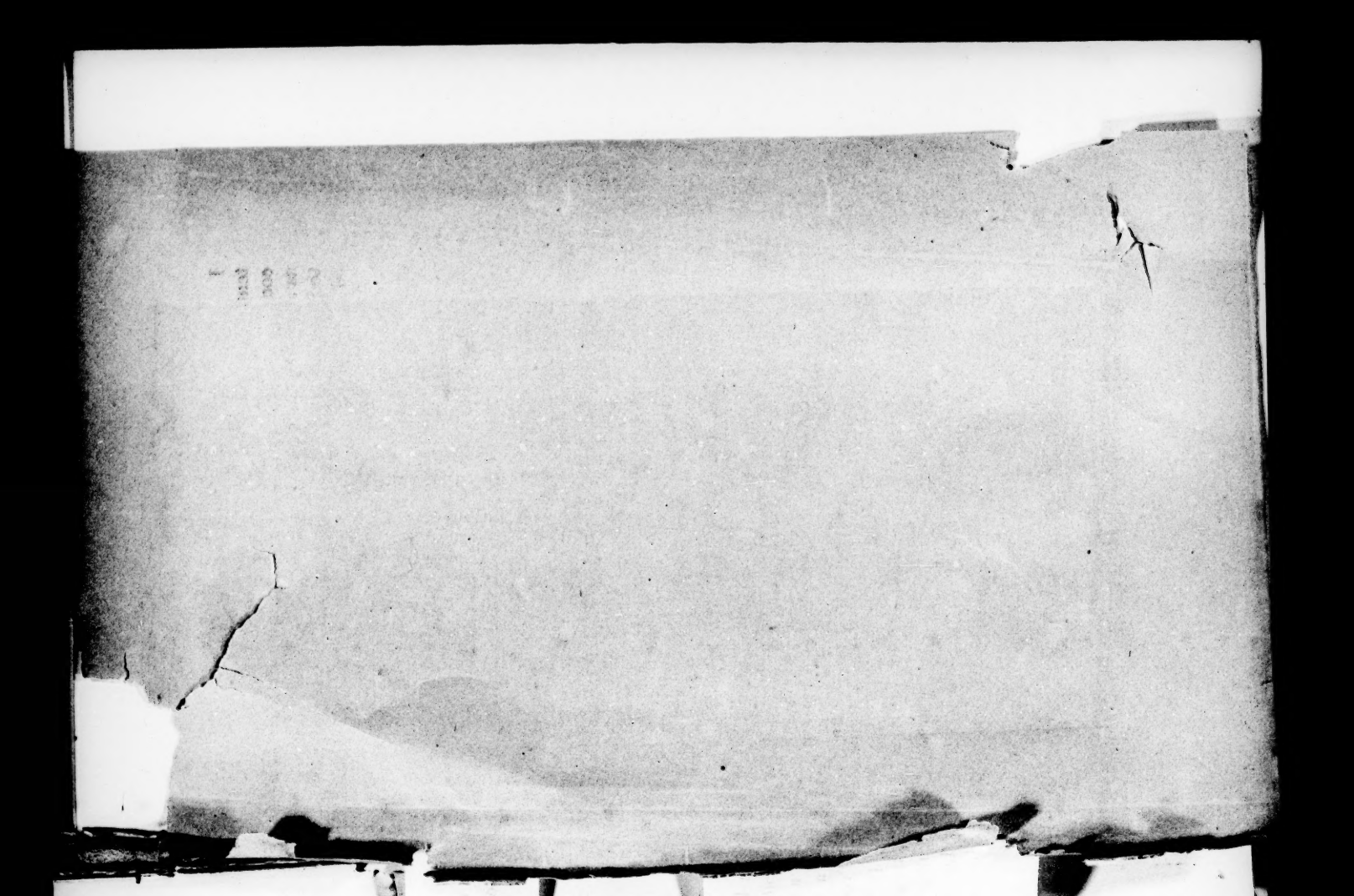
Surely it will not be intimated that this is NOT a Federal question of the most substantial nature, no matter in what form it may be presented or decided.

It is respectfully submitted that the attempt to apply the principles of "the general public law" to this case is neither justified by precedent nor analogy, and ignores the existence of "the facts and circumstances disclosed by the record," which are the very life of the case.

What is meant by the "general public law?" Why, manifestly, that law which is applicable to a war "*inter gentes*."

The very first step, then, to be taken is to ascertain whether or not the law applicable to a war "*inter gentes*" is applicable to the facts of this case.

If Mr. McVeigh had been an Englishman residing in Alexandria, and war between Great Britain and the United States had become flagrant before the maturity of the notes, and he, upon the breaking out of the war, had left Alexandria and gone to England, then the "general public law" would have applied to the case, because it would have been as well his *privilege* as his *duty* to leave the dominions of the enemy of his government, and go to give aid and comfort to his lawful sovereign. In such a case, according to the "general public law," the contract would have been suspended, and the holder of the note, not being *permitted* to give notice during the war, would have been



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In ascertaining whether or not the general public law and the incidents and consequences of a war "*inter gentes*" apply, the following rules must be observed: 1st. In a *civil conflict none* of the incidents and consequences of a war "*inter gentes*" apply, until the *sovereign* by some *act* recognizes the fact that the *insurrection* has assumed the proportions of a war. 2d. That after such recognition, the general public law can apply only so far as the questions which arise are of a general nature, and cannot apply when these questions are peculiar to the relations of the parties to the conflict.

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excused from giving such notice, *and excused simply and only because he was not permitted.*

So, if Mr. McVeigh had resided in the City of Richmond at the time when the existence of the war, as recognized by the Federal Government, made communication between the holder in Alexandria and the endorser in Richmond unlawful, in that case the "general public law" would have applied, for then the Bank would have been prohibited by that law from sending the notices to the endorser in Richmond; but just here the application of the "general public law" ceases.

In the case just supposed, if the endorser had returned from England and come back to Alexandria, notice then given to him would have been unlawful, because the "general public law" would have alike prohibited his leaving the dominions of his own sovereign and his coming within the territory of the enemy.

But in this case, how can it be said that the "general public law" prohibited Mr. McVeigh from remaining at, or returning to, his home within the jurisdiction of his own Government, from which jurisdiction he had unlawfully departed?

In the one case the "general public law," would have made the notice unlawful, though personally given, either by the holder going to England or the endorser coming to Alexandria.

In the other case, the law while it might not permit the holder to go to Richmond, to give notice, did allow the endorser to return to his residence in Alexandria to receive notice.

The distinction between this case and *The Insurance Co.*, vs. *Hendren*, is too apparent for argument.

In the case of *Bolling* vs. *Lersner*, this Honorable Court refused to take jurisdiction, because the record, independent

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of the opinion of the State Court, did not show that a federal question was either considered or decided, while the opinion itself, not only declared that the federal question was not considered, but showed that the judgment of the court was based upon other questions sufficient to sustain it, and which made it unnecessary to consider the federal question.

What application has such a case to that now under consideration?

One word in reply to what is said in the brief in reference to the cases of *Ludlow* vs. *Ramsay*, &c., &c. (p. 11).

It is argued that because these cases were appeals from Federal and not State Courts, that they have no application to this case. Is this not a *non sequitur?* Do the learned counsel mean to assert that the Circuit Courts of the United States have no jurisdiction of Federal questions?

These cases were cited not so much for the purpose of showing that this Honorable Court has jurisdiction because they were Federal questions, but rather to show that the Supreme Court of Appeals in passing upon the same Federal questions had not followed these decisions.

In *Ludlow* vs. *Ramsay*, this court held that the absence of Ramsay from his home, was voluntary. Whether voluntary or not depended upon whether or not the "general public law" applied to the case. If it had applied, then his absence would not have been voluntary. The court held that it did not apply, or in other words, that the law of the *Federal constitution* governed the case.

It was a Federal question.

Indeed, it is not stating it too broadly to say, that every question, as to the effect of the late war upon the duties, obligations and contracts of citizens of the respective sec-

of the opinion of the State Court, did not show that a federal question was either considered or decided, while the opinion itself, not only declared that the federal question was not considered, but showed that the judgment of the court was based upon other questions sufficient to sustain it, and which made it unnecessary to consider the federal question.

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It is argued that because these cases were appeals from Federal and not State Courts, that they have no application to this case. Is this not a *non sequitur?* Do the learned counsel mean to assert that the Circuit Courts of the United States have no jurisdiction of Federal questions?

These cases were cited not so much for the purpose of showing that this Honorable Court has jurisdiction because they were Federal questions, but rather to show that the Supreme Court of Appeals in passing upon the same Federal questions had not followed these decisions.

In *Ludlow* vs. *Ramsay*, this court held that the absence of Ramsay from his home, was voluntary. Whether voluntary or not depended upon whether or not the "general public law" applied to the case. If it had applied, then his absence would not have been voluntary. The court held that it did not apply, or in other words, that the law of the *Federal constitution* governed the case.

This is a stronger case than that, for Ramsay never was within the Federal lines and under the protection of the Federal authorities, while McVeigh was, and left his home within these lines and under that protection to go within the Confederate lines.

tions, which depends upon our peculiar form of government and the relations which the State governments bear to the Federal government, and to which, because our institutions are "*sui generis*," the general public law can have no application, is a Federal question.

The counsel in the argument of the case of *Ludlow* vs. *Ramsay*, took the same ground relied upon in the brief of the defendants in error, to wit; that the effect of Ramsay's absence from his home was to be determined by the "general public law," but this Honorable Court decided that it was a Federal question, and must be judged by the Federal law.

But does the record show that this Honorable Court has jurisdiction of this case?

What does the record show was the judgment of the Court upon this issue so clearly made?

The Supreme Court of Appeals of Virginia and the Supreme Court of the United States have not always agreed as to what is a Federal question, and the State Court has sometimes refused to follow the decisions of the Federal Court upon Federal questions.

The case of *Martin* vs. *Hunter's Lessee*, and the more recent case of *Beauchler* vs. *Walker* in 27 Gratt, pp. 515, 517, may be cited as instances of the kind.

The judgment of the Supreme Court of Virginia finds that at the maturity of the notes sued on respectively, the endorser *had a residence and place of business in the city of Alexandria, and that the notices of protest were left on the day of protest, as to six of the notes, at the endorser's residence with his white servant, in charge of said residence, and as to the other note, at the banking house of the plaintiff, the place of*

business of the endorser, who was the president of said bank. (Page 30 of the record.)

The judgment of the Court (page 30 of the Record), is as follows: "The Court is further of the opinion * * * that the notices addressed to William N. McVeigh, delivered to his white servant at his *residence in Alexandria*, and the notice delivered to Ramsay at the Bank of the Old Dominion, * * * were insufficient in law."

If this was the whole of the judgment it would be a judicial paradox, inasmuch as it would hold that the very notice which, by the contract of endorsement, the holder had agreed to give, and the endorser had agreed to receive as *sufficient*, was not sufficient.

But the above quotation from the judgment of the court is qualified as follows: The court is of the opinion that the notices, &c, "*under the facts and circumstances*," ~~were~~ disclosed by the record were insufficient in law.

By referring to the record we find that the only fact, other than those of a political nature, was simply this, to wit: that the endorser and his family, at the time the notices were left at his residence and place of business, were on a visit to their friends in Culpeper County, Virginia.

It is evident that this cannot be "the facts and circumstances" disclosed in the record, to which the court referred in explanation of its judgment, for this fact does not make the judgment less paradoxical than it before appeared.

But the judgment does not leave us uninformed as to what the facts and circumstances referred to are. In the beginning, the judgment declares that "the court is of opinion, for reasons stated in writing and filed with the record, that the judgment of the court below was erroneous," and in conclusion, remands the cause to the Corporation Court for further proceedings therein, in conformity with the principles declared in the judgment, "and the opinion of the court filed with the record."

Then it is evident that we must look to the *opinion* in order to find out what the *judgment* was, and we shall find that it responds to the issues made by the pleadings and instructions. President Moncure and Justice Christian holding that the case was one solely of commercial law, while the other three judges held that the principles of the commercial law were controlled by the facts and circumstances disclosed by the record, to wit, the proclamations of the President, the war, the election of the endorser to adhere to the Southern Confederacy in obedience to the ordinance of secession, &c., &c., &c.

The opinion gives a brief statement of the case at page 31 of the record, to the effect that the notes sued on were made and endorsed, whilst the maker and endorser were residents of the city of Alexandria before the beginning of the late war—but that before their maturity, war was flagrant between the Northern States and the State of Virginia, which had WITHDRAWN from the Union and united with the Confederate States, and that when the said notes matured, were dishonored and the alleged notice of dishonor given to the endorser, the enemy had invaded and taken possession of the city, to wit, on the 24th day of May, 1861, and that William N. McVeigh, the endorser, had left Alexandria on the 30th day of May, 1861, and gone within the Confederate lines, and did not return to the City until after the close of the war.

It then proceeds to discuss and decide all of the federal questions raised by the instructions and others not directly raised by them in the following order:

1. At page 32 of the record, it states that the war was flagrant and recognized by the proclamation of the President of the United States, issued in April, 1861, and from that time the citizens of the United States and the citizens of the Confederate States, were enemies to each other, and

that all intercourse was from that time unlawful and prohibited.

2. At page 33, *et seq.*, of the record it states, that the endorser, Wm. N. McVeigh, having espoused the cause of the Confederacy and gone within the Confederate lines, the holder and the endorser were enemies, and by virtue of the proclamation aforesaid, and of the war which said proclamation recognized, it was unlawful for the bank to demand or for the maker or endorser to make payment of the notes.

3. At page 34 of the record, it states that when the notices of protest were left at the the residence and place of business of the endorser in Alexandria, the endorser was within the Confederate lines and separated from the bank by "a wall of fire," and for this reason the notices "were but idle forms."

4. At page 35 of the record, it holds that the legal effect of said proclamations was to recognize a war with all of the incidents and consequences of a war, *inter gentes* one of which incidents and consequences was to make it unlawful for the endorser to be at his residence and place of business in Alexandria to receive the notices and, *therefore*, that the attempted service on the endorser "*was wholly inoperative and void.*"

5. At page 36 of the record it states, "it was not leaving his home and place of business, which he had a right to do, under his contract, which prevented its execution or caused its suspension. 'It was the war.'"

6. At page 36 of the record, it holds that upon the breaking out of the war, "the citizen (the endorser) had the right of election to which side he would adhere. It is true that the opinion does intimate that the decision of this question is not necessary to the decision in the cause, but proceeds to apply the results of the decision of the

question to the decision of the cause in a glowing tribute to the patriot.sm of the endorser!

7. At page 38 of the record it holds that at the time the notes matured, because of the proclamation of the President, recognizing the existence of the war, there was an "*impassable barrier*" between the endorser and the holder of the notes.

8. At page 37 of the record it holds that the endorser, having elected to adhere to the Confederacy, was not *voluntarily* absent from his residence and place of business when the notices of protest were left there for him, because "it cannot be justly said that a man voluntarily does that which, if he did not do, he would be in danger of loss of life or liberty from a power which it was impossible for him to resist, or *be required to subject himself to moral degradation.*"

It is deemed unnecessary to proceed further with the specification of Federal questions discussed and decided in the opinion of the Supreme Court of Virginia. Eliminate from it the political principles discussed and the Federal questions decided, and there is absolutely nothing left upon which the judgment of the Court can be based.

There is, however, one general question which involves all others, to which a brief reference will be made.

The Supreme Court of Virginia held that the United States having recognized those in arms against the Federal Government *as belligerents*, that the effect of this recognition was to make the late conflict a war in the legal sense, and that all of the incidents and consequences of a war "inter gentes" immediately applied.

This position is not warranted by the decisions of this honorable Court. There is a marked and necessary distinction. The United States claimed *sovereign* as well as belligerent rights; they conceded only belligerent rights to

the Confederates, and while the Federal Government made this concession, it claimed the first allegiance of every Confederate, and carried on the war for the sole purpose of enforcing that claim.

In a war "inter gentes" one sovereign has no interest in the citizens of the other; but in this case the United States were interested in the Confederates as *citizens* of the United States.

There was no recognition of the right of the Confederate Government to the allegiance of the Southern people, nor any obligation on their part to obey any law of the Confederate Government, or of the seceding States, that denied the sovereignty of the Federal Government.

The error of the Supreme Court of Virginia upon this general question is apparent upon every page of the opinion.

Let us illustrate. It holds that it was unlawful for the endorser to be at his residence in Alexandria after the city was in the possession of the Federal authorities.

Why unlawful? We have seen that neither the Constitution nor laws of the United States, nor the proclamations of the President made it unlawful for him to be in Alexandria either before or after the notices were delivered at his residence and place of business in that city.

It is evident that the court meant that the laws of the *Confederate* Government, which claimed the allegiance of its adherents prohibited them from having any intercourse with the citizens of the United States, and we thus perceive that the validity of the Confederate Constitution and of the secession ordinance was very subtlely, but none the less certainly, decided.

Again, the Supreme Court of Virginia decided that the endorser could not have remained at or returned to his home in Alexandria without danger to life or liberty, or being required to subject himself to *moral degradation*.

The court must have meant that Mr. McVeigh would have been required to take the oath of allegiance to the United States. No other meaning is possible. But how could the taking of that oath be moral degradation if it was not perjury, and how could it be perjury unless it violated some valid law which forbade him to take that oath? Here again we see the legal obligation of the ordinance of secession sustained.

But still further. The Supreme Court of Virginia holds that when the war broke upon the country every citizen had the right to elect to which side he would adhere. Did the court mean to say that a citizen of the State of Massachusetts, which did not pass a secession ordinance, had the same right of election that the citizen of Virginia, which did pass such ordinance, had? It could not have meant this, because the whole argument of the court is based upon the theory that the first allegiance of the citizen was due to his State, and that he owed allegiance to the Confederate Government only because the State had *withdrawn* from the Union, and transferred his secondary allegiance from the one general government to the other. Then why had not the citizen of Massachusetts the same right to adhere to the Confederacy that the citizen of Virginia had? Was it not because Virginia passed a secession ordinance and Massachusetts did not? Did not the Supreme Court of Virginia decide that the secession ordinance of Virginia was a valid law?

The State Court, to sustain its decision that the notices left at the residence and place of business of the endorser, in Alexandria, while he was within the Confederate lines, adhering to the Confederate Government, were "*mere idle forms*," cites the case of *Dean* vs. *Nilson*, seemingly unmind-

ful of the fact that this court, in the case of *Ludlow* vs. *Ramsay*, which was almost identical with this case, held that, when a party was voluntarily absent from his home within the Federal lines, so that he did not receive notice, that this fact did not invalidate the notice nor impose upon the other party the obligation of giving further notice after the close of the war; and further, that *no absence could be deemed to be involuntary unless enforced by the express order of the Federal authorities.*

To sustain its decision that upon the breaking out of the war every citizen had the right to elect to which side he would adhere, the State Court cites the case of *Ingliss* vs. *Sailors' Snug Harbor*, seemingly unmindful that the decision in that case was based upon the fact that the Revolution of 1776 was successful, resulting in the "*dismemberment of empire*" and *the establishment of a new government.* Judge STORY, speaking for the Supreme Court of the United States, could not have meant to say that if Great Britain had succeeded in suppressing that rebellion, that the courts of the lawful sovereign would have recognized the right of election which it denounced and punished as treason!

But the revolution of 1861 was not successful, and it does seem to be somewhat inconsistent to claim, that the courts of the United States, State or Federal, must decide that those who elected to adhere to the Confederate Government had the right to do so, when the United States claimed that the assertion of that right was disloyalty, and waged a long and sanguinary war to maintain and establish that claim.

And now, the success of that war having vindicated the supreme sovereignty of the Federal Government, is it not a contradiction in terms to hold that any one can be heard in a court in any State of the Union to plead his disloyalty to the Government as an immunity from his legal liabilities?

But it is asserted that the Supreme Court of Virginia, in its last opinion, has declared that it before refused to give any opinion as to the constitutionality of the ordinance of secession, "such question being irrelevant and not material, '*as we think*,' to the decision of the cause."

There may be a distinction between giving an opinion *in terms* upon the constitutionality of the ordinance and applying to the case under consideration rules of law which would have no application to it, unless the ordinance was valid. Perhaps the Court had the distinction in mind.

Be this as it may, it is impossible that the learned counsel for the defendants in error meant to make the impression that the Supreme Court of Virginia has at any time or anywhere stated that *no* Federal question was involved, and that *none* had been decided by that Court.

It cannot be doubted that at least four Federal questions were expressly decided by the Supreme Court of Virginia, and that the decision of these questions was absolutely necessary to the judgment rendered by the Court.

1. The Court decided that the proclamations of the President made in April, 1861, prohibited all intercourse between the hostile sections.

2. The Court decided that *all the incidents and consequences* of a war *inter gentes* applied to the late conflict from the very beginning of it.

3. That the legal effect of the proclamations of the President issued in April, 1861, was to make notices given to parties who had left their homes within the Federal lines and gone into the Confederate lines invalid, and to impose upon parties giving such notices the obligation of giving further notice after the close of the war. (Page 36 of the record.)

4. That the legal effect of the said proclamations upon the contract of endorsement was to suspend it, and make

the protest of the notes, as well as the notice thereof, unlawful. (Page 38 of the record.)

These questions have been decided by this honorable Court to be Federal questions in several cases. The cases of *Ludlow* vs. *Ramsay*, *Mitchell* vs. *The United States*, *Matthews* vs. *McStea*, 91 U. S. R., 7; and *Bond et al.* vs. *Moore*, 93 U. S. R., 593, are directly in point.

The ~~This~~ decision in the latter case is pecularly applicable to the case under consideration. In that case as in this, the question involved, was the legal effect of the proclamation of the President upon the duties of the holder of protested paper to give notice of protest.

This court held in that case, that it was the duty of the holder to make demand and give notice of dishonor as soon as the prohibition of commercial intercourse was removed, and that it was removed by the proclamation of April 29, 1865, *though the war still existed.*

The case under consideration is the converse of that case. The effect of the proclamation of the President in April, 1861, did not prohibit commercial intercourse, therefore it was the duty of the plaintiff in error to make demand and give notice of dishonor at the maturity of the notes sued on. If this had not been done, recourse against the endorser would have been lost. The obligation to give notice then, was not suspended by the President's proclamation.

This being settled, the notices left at the residence and place of business of the endorser in Alexandria were sufficient, and the judgment of the Supreme Court of Virginia reversing the judgment of the Corporation Court was erroneous.

There is a marked distinction between the case where the hostile lines come between the holder and the endorser's residence so that the holder cannot deliver notice at that residence, and the case where the endorser leaves his resi-

dence where the notice is left, and goes within the hostile lines.

A simple analysis will show what questions were decided by the Court of Appeals of Virginia.

The parties were all residents of the City of Alexandria when the contract of indorsement was made.

By that contract the indorser agreed that in the event of his absence from his residence at the maturity of the notes, notice of dishonor and protest, left at such residence, would be sufficient to bind him.

The holder agreed that notice should be so left, and carried out this agreement.

Why was the indorser not bound by this notice ?

The Supreme Court of Appeals of Virginia, *inter alia*, decided that he was not bound by those notices, because at the time they were left at his residence in Alexandria, war was flagrant by virtue of the proclamation of the President of the United States, and the holder and endorser thereby became enemies, and the execution of the contract on the part of the endorser was suspended and prohibited.

This Honorable Court has decided that this view of the Supreme Court of Virginia, is erroneous.

It was the duty of the holder to give notice at the time of the dishonor—in accordance with the contract—neither the existence of the war nor the proclamations of the President either suspended or prohibited the performance of this duty.

If the holder had failed, thus to give notice, and the war had ended in ninety days or the endorser had chosen for any reason to return to his residence, and the bank had then given notice, would not this notice have been too late ?

Could the bank have claimed that it did not leave notice at the endorser's residence because he was away or absent within the Confederate lines in exercise of his election to adhere to the Confederacy? Surely not. Logically, the answer of the endorser would have been—it did not concern you where or why I was absent—I had a residence in Alexandria and you contracted to leave notice of dishonor and protest there.

If the holder had sought to escape the consequences of the failure to leave notice at the endorser's residence, upon the ground that the existence of the war and the proclamations of the President made it unlawful thus to leave notice, the answer would have been *judicially*, that the existence of the war and the proclamations of the President did not have any such effect, and upon both grounds the endorser would have been released.

If it be asserted that at the time of dishonor of the notes the endorser, *in law*, had no residence in Alexandria, because he had abandoned his residence with the purpose of not returning thereto, and had acquired a residence within the Confederacy, the answer to this assertion is found in the judicial determination of this Honorable Court, that such abandonment and acquisition would have been *unlawful*. Why? Because it would have been desertion of his lawful sovereign and adherence to the enemy of that sovereign.

Mitchell vs. *The United States.*

Can a party in any court be permitted to plead a violation of law as an immunity from his legal obligations?

On the other hand, if it be maintained that at the time the notice was given the endorser had not, *in fact*, a residence in Alexandria, the record refutes this pretention, in that it shows that the visit to Culpeper did not terminate until the Fall of 1861, and further that as late as the Spring of 1862 the endorser claimed a residence in Alexandria,

and voted for a delegate to represent that city in the General Assembly of Virginia, sitting in Richmond.

But suppose it had been lawful for the endorser to abandon his residence in Alexandria, and that he had, in fact, abandoned it, this would have *excused* the giving of notice of dishonor and protest. This Honorable Court, in the case of *Williams* vs. *The Bank*, 2 Peters, 102, decided that if the endorser be absent from the State at the time of dishonor, this excuses the giving of notice. The endorser in this case, not only left the State, but went within the jurisdiction of a Government *at war* with his Government.

Ludlow vs. *Ramsey.*

Although the merits of the case are not supposed to be before the court upon a motion to dismiss for want of jurisdistion, yet as this is a peculiar case and has attracted more than ordinary attention and inasmuch as the learned counsel for the defendants in error have asked the court to pass upon the merits of the case at this time, a brief reference to the merits will be excused.

Are there any equities in this case which called for interposition in behalf of the endorser?

It is submitted that the endorser's defence is entirely without merit.

As president of the bank he endorsed his brother's notes, and then as one of the directors of the bank discounted the notes upon the faith of the security of his own endorsement. As president of the bank it was his duty to see that everything was done necessary to protect the interests of the bank, yet he deserted his post and went with the makers of the notes within the Confederate lines. He knew that the notes were dishonored at maturity, and knew that payment of them was attempted in 1864 in worthless currency, and must have approved of such attempted payment because two of the notes for $2,500.00 each were his own obligations.

Here, then, we have the President of a bank who had lent the money of the bank upon his own endorsement, attempting to avail himself of the provisions of an unconstitutional law, passed in the interests of *somebody*, to pay an honest debt in worthless currency; and when that attempt fails, sets up the technical defence of want of notice of dishonor, which, if necessary at all, it would have been his duty as president to have given. And this defence is made under these circumstances which ought to have made it impossible, although nothing that the bank did or failed to do has exposed this president endorser to the loss of one cent.

Well might President Moncure, speaking of the endorser, ask, "was there any conflict in this case between patriotism on the one hand and honesty and fidelity on the other?

"Could he not be patriotic and at the same time honest and faithful?"

26 Gratt, 84, 87.

It is quite apparent that the only debatable question in this case is the question of jurisdiction.

If this Honorable Court has jurisdiction, the law has been so clearly and definitely settled by repeated decisions, that further consideration need not be given to it.

If, under the rules of the court, the plaintiff in error has the right to have a decision upon the merits, it is respectfully submitted that both judgments of the Supreme Court of Appeals of Virginia should be reversed and the judgment of the Corporation Court of Alexandria rendered at the first trial affirmed.

The court is respectfully referred to the authorities cited in the petition.

H. O. CLAUGHTON,
for Plaintiff in Error.

IN THE SUPREME COURT

OF THE

UNITED STATES.

—:o:—

THE BANK OF THE OLD DOMINION,
vs.
JAS. H. McVEIGH & WM. N. McVEIGH.

On motion to dismiss for want of jurisdiction, &c.

REPLY TO MR. ROBINSON'S BRIEF.

This is the third notice of motion to dismiss this cause for want of jurisdiction. The former proceedings resulted in a motion, on the part of the defendants in error, to dismiss their motion to dismiss, which was allowed more than six months ago.

The ground of the former motion was want of jurisdiction alone. Since that motion was disposed of the defendants in error have retained other learned counsel, who has discovered an alleged defect in the writ of error, and in his brief this is set out as a ground for dismissal.

This ground, however, does not seem to be relied on, as it is conceded that the writ, if defective, may be amended. Notwithstanding this concession, a brief reference to this point may not be inappropriate. This cause, as stated in the first paragraph of the petition on the first page of the record, was twice before the Supreme Court of Appeals of Virginia—first in the name of the McVeighs, plain-

tiffs in error, against the the Bank, defendant in error, and afterwards in the name of the Bank, plaintiff in error, against the McVeighs, defendants in error. But the parties in both writs were the same—it was the same case.

At the hearing of the case when the McVeighs were plaintiffs in error, the State-court decided the Federal questions, which give this Honorable Court jurisdiction. But as a new trial was awarded that judgment was not final—and a writ of error would not lie until after the result of the new trial had disclosed the fact that the plaintiffs could not prevail independent of a decision upon the Federal questions by the highest Federal tribunal.

At the second trial the plaintiffs prayed several instructions, ivnolving various Federal questions, which were refused by the Corporation-court because they were supposed to have been decided in the first judgment of the Supreme Court of Appeals. At the second hearing before the Supreme Court, when the Bank was plaintiff in error, and the McVeighs were defendants in error—that court approved the rulings of the Corporation court in refusing to give the said instructions, holding that the refusal was right, if upon no other ground, because they were in contravention of the first judgment of the Supreme Court of Appeals—which can only mean that the first decision was a judgment upon the questions involved in the said instructions. After this last judgment was rendered by the Supreme Court of Appeals—this writ of error was applied for and awarded.

It seems that in the writ the parties are named as they appeared in the case when the State-court entered its first judgment—and not under the style of the case when that court rendered its last decision.

But this must be immaterial. The case has but one record. The object of the writ is simply to bring up the record, and having accomplished its only purpose, its mission has been fulfilled. If, however, this transposition of

the names of the parties renders the writ defective, it is conceded that it can be amended.

When the former motion to dismiss was pending, a brief was filed on behalf of the plaintiff in error, which is again submitted to the court, with this supplement.

The brief just filed by the counsel for the defendants in error, takes the new ground that when, the highest State court, reverses a judgment upon Federal questions, and sends the case back for a new trial, that if the case goes again to the highest State-court, upon questions not Federal—and the last judgement is not rendered until after the expiration of two years from the date of the judgment which did involve Federal questions, that the party against whom the State-court decided the Federal questions, has no right to the jurisdiction of this court—because, as it is argued, the period within which a writ could issue to the first judgment has expired, and the last judgment, involved no Federal question. This position seems inconsistent with the admission, that the first judgment was not final, in the sense that it could be appealed from until after the last judgment was rendered.

It is supposed that the first judgment only becomes final when the last action of the State court is adverse to the party against whom the court decided the Federal questions at the first hearing before that court. This conclusion seems absolutely necessary. Take this case as an illustration. The State-court, at the first hearing, decided that the notices left at the residence of the indorser during the war, were insufficient to bind him, because the Proclamations of the President, issued in April, 1861, prohibited all intercourse between the Bank and the indorser, and that in order to bind the indorser it was necessary for the Bank to prove notice after the close of the war.

The case is sent back for such proof, and it cannot be obtained. It is not until this appears, that it becomes certain that the case cannot be decided in favor of the

plaintiff without the consideration of the Federal questions, which were decided against him at the first hearing in the highest State court. Now if it were true that the plaintiff has no right to have the Federal questions which were decided against it on the first hearing by the State court, reviewed by the highest Federal tribunal, either because that judgment was not final when made, or because the last judgment of the State court does not decide any Federal question, the purpose of the Constitution and Federal laws, to secure to every litigant this right, would be defeated, "and the rights of this character guaranteed by the Constitution and laws of the Union would be left to the exclusive and final control of the State-courts."

This position is sustained by many decisions of this court. McComb vs. Commissioners 91 U. S. 1. St. Clair Co. vs. Lovingston 18 Wall 628. Parcels vs. Johnson 20 Wall 653. In the last named case, the opinion of the court is very explicit—that this court cannot review the judgments of the highest State courts, involving the decision of Federal questions, until the powers of the State courts in the premises have been exhausted, because until this is done, "it is not apparent that a new case may not be made, which will render unnecessary the consideration of any question that can give this court jurisdiction." In the case of Davis vs. Crouch 94, U. S. 514, the court was still more explicit. In that case, the court referring to the decree of the State court deciding certain Federal questions, and remanding the cause for further proceedings, says: That "until the suit has been finally disposed of in the State courts," we cannot tell whether they, (the appellants,) will be injuriously affected by the errors now complained of. "The case may be again taken to the Court of Appeals upon the future decree of the Circuit court, and from *there*, *here*, if necessary."

In the eye of the law, the last judgment of the highest State court involves the first, and makes it a final judgment.

It is insisted in this case, that both judgments of the State court, decided Federal questions, and decided them erroneously. In the first judgment, the court decided the Federal questions directly, in the second judgment it decided Federal questions in affirming the ruling of the Corporation court, refusing the instructions prayed by the plaintiff in error, at the second trail—and both judgments are now before this court.

The brief filed by the learned counsel for the defendants in error, when the former motion to dismiss was pending, insisted in the first place, that the record, independent of the opinions of the court, did not show that the plaintiff in error raised any Federal questions at the first trial—and that this court could not look at the opinion of the State court to ascertain whether or not a Federal question was decided.

In the brief filed for the plaintiff in error at that time, it was insisted that it was not necessary that the Federal question should be expressly raised by the pleadings, to give jurisdiction to this court, but that it was sufficient if such question was actually decided by the State court, and that the opinion of the court could be looked to for the purpose of ascertaining whether or not a Federal question was decided. Since that brief was filed this Honorable court has in two cases, sustained this position. In the case of Murray *vs.* Charleston 96 U. S. 441, Mr. Justice Strong, delivering the opinion of this court, said; "The form and mode in which the Federal question is raised in the State-court is of minor importance, if, in fact, it was raised and decided." "In questions relating to our jurisdiction, undue importance is often attributed to the inquiry, whether the pleadings in the State-court expressly assert a right under the Federal Constitution. The true test is not whether the record exhibits an express statement that a Federal question was *presented*, but whether such question was *decided*, and decided adversely to the Federal right." And Mr. Justice

Field, in delivering the opinion of the court in Williams *vs.* Bruffy 96 U. S. 184, says: "It is sufficient to give this court jurisdiction, that though not in terms specially stated in the pleadings, they (Federal questions) were *necessarily involved in the decision, and that without their consideration, the judgment would not have been rendered.*" And in an earlier case, reported in 15 Wall 380, this court holds that where the Federal question was only *obscurely* raised, it would not dismiss for want of jurisdiction, although it had a clear conviction that the decision of the State court was correct.

It was supposed that ever since the decision of the case of Murdoch *vs.* the City of Memphis, the law was settled, that this court would look to the opinion of the State court in order to ascertain whether or not a Federal question was decided. The brief last filed on behalf of the defendants in error, indicates how necessary it is for their case to exclude the opinion of the State court from this record, by seeking to escape the decision in Murdoch *vs.* the City of Memphis—and refers to three cases in support of the argument, that the opinion of the State court cannot be referred to, to wit—Edwards *vs.* Elliott 18 Wall. 532; Moore *vs.* Mississippi Id. 638, and McManus *vs.* O'Sullivan 91 U. S. 578. In the first case there was no opinion to refer to—in the second the court held that as the record showed clearly upon its face that the case was decided upon other grounds, making it unnecessary to pass upon the Federal questions, it would not look to the opinion, and in the third case, this court did actually look to the opinion, to ascertain whether or not a Federal question was decided.

Thus it is apparent, that these cases are all in accord with the decision in Murdoch *vs.* the City of Memphis.

It will be observed that all of these cases were decided without reference to the fact, whether or not the opinions were technically parts of the record; indeed they seem to proceed upon the theory that they were not. But in this case, the opinions are parts of the record, made so not only

by the organic law of State—Section 4, Act 6 of the Constitution—but by the judgment of the court, which refers to the opinion as part of the judgment, and directs the Corporation-court to conduct the new trial in accordance with the principles declared in the opinion. (See Record pages 30, 31.) In the case of Brown *vs.* Atwill 92 U. S. 329, the court held that an opinion referred to in the judgment is made part of the record.

The conditions upon which this court will take jurisdiction of a judgment of the highest State court may be thus formulated:

1. Where a Federal question is clearly raised in the pleadings, and decided by the court.

2. Where the Federal question is obscurely raised by the pleadings, and the judgment of the court may have involved the decision of such questions. Pennywit *vs.* Eaton 15 Wall 380.

3. Where the Federal question is raised in the pleadings—no matter in what form, or how obscurely, and the judgment rendered by the State-court, would be legally impossible, without the decision of such question. Maguire *vs.* Tyler 8 Wall 650. Williams *vs.* Bruffy 96 U. S. 184.

4. Where, although the Federal question was not raised in the pleadings—the court decided such question, and without the decision of such question the judgment could not have been rendered. Murray *vs.* Charleston 96, U. S. 432. Williams *vs.* Bruffy 176.

And in order to find that a Federal question not raised in the pleadings was decided, this court will look not only to the judgment, but if necessary, to the opinion of the State-court explaining that judgment.

Now in the light of these rules, let us examine the record in this case—and for the sake of the argument, let it be conceded that the Federal question was not *clearly* raised by the pleadings.

Surely it will not be denied that the instructions prayed by the defendant on the first trial, referring to the existence of the war prior to August 16, 1861, as a reason why notices left at the residence of the indorser, within the Federal lines, while he was absent from said residence, within the Confederate lines—do at least *obscurely* raise the Federal question, as to the effect of the war as recognized by the Proclamations of April, 1861, upon the contract of indorsement—and the duty of the Bank to give the indorser notice of dishonor and protest, notwithstanding the said Proclamations. Or in other words, these instructions did at least, *obscurely* raise the Federal question, as to whether or not the said Proclamations prohibited commercial intercourse between the hostile States. Matthews *vs.* McStea.

Said instructions did raise at least the Federal question, as to whether or not, the indorser having left his residence within the Federal lines, and gone within the Confederate lines, in adherence to the rebellion, this made notices left at his residence "idle forms," and imposed upod the Bank the duty of giving further notice after the close of the war. Ludlow *vs.* Ramsay.

And so these illustrations might be multipled, were it necessary to do so.

Again, these Federal questions having been raised by the pleadings—though *obscurely*—and the other questions in the case being insufficient to sustain the judgment without a decision of these Federal questions, this court will hold that the Federal questions were necessarily involved in the judgment of the State-court, and therefore take jurisdiction. Maguire *vs.* Tyler.

But further, even if it were true that no Federal question was raised, yet if such questions were *actually decided* by the State-court, this would give jurisdiction to this court—and in order to ascertain whether or not a Federal question was decided, if this fact did not clearly appear from the judg-

ment itself, this court would look to the opinion for information.

Now, as the Federal questions were raised by the pleadings, though only obscurely—and the judgment of the court, holding that notices of dishonor and protest left at the residence of the indorser on the day the notes matured, were insufficient to bind the indorser, could not have been rendered without deciding these Federal questions adversely to the plaintiff in error, the jurisdiction of the court is apparent.

But there is no necessity for so great refinement in this case. Beyond all question the judgment of the State court shows that it rested exclusively upon the decision of questions which this court has repeatedly held to be Federal. This judgment is found on page 30 of the record. What is it? "The court is of opinion, *for reasons stated in writing and filed with the record*, that the judgment of the said Corporation-court is erroneous. * * * and that it did not err in giving the first instruction moved by the plaintiffs in error. * * * The court is further of opinion that the notices addressed to William N. McVeigh, delivered to his white servant at his residence in Alexandria, *under the facts and circumstances disclosed by the record*, were insufficient in law, and that in order to bind the said indorser, it was incumbent upon the defendant in error within a reasonable time after communication was restored, &c., to give said indorser notice, &c., *and that for the foregoing reasons, which are more fully set forth in the opinion of the court, filed with the record as aforesaid*, the court erred in refusing the plaintiffs in error third instruction." * * "And the case is remanded to the said Corporation-court for further proceedings in conformity with the principles herein declared, and *in the opinion of the court filed with the record.*"

The judgment holds that the Corporation court did not err in giving the *first* instruction prayed by the defendants, and did err in not giving the third. These instructions

refer to the facts and circumstances disclosed by the record, under which, in the judgment of the court, the notices were insufficient, which, but for these facts and circumstances, would have been sufficient, and the court makes the opinion a part of the judgment for the purpose of *more fully* showing what the judgment was.

Now let us examine the opinion as more fully expressing the judgment—and what do we find?

1. That the court decided that the existence of the war as recognized by the Proclamations of the President, issued in Appil, 1861, prohibited commercial intercourse between the Bank and the indorser, who had gone within the Confederate lines, and made it unlawful for the Bank to give the indorser notice of the dishonor and protest of the notes, and that for *this reason the notices were insufficient.*

Was not this deciding a Federal question, and was not the judgment that the notices were insufficient absolutely dependent upon the decision of the Federal question?

2. That the existence of the war, as recognized by the said Proclamations, made the holder and the indorser enemies; and raised a "wall of fire" between them which made it legally impossible for the indorser to be at his residence in Alexandria when the notices were left there, that under these circumstance, leaving the notices at his residence were but "idle forms," and *therefore the notices were insufficient.*

Was this not deciding a Federal question—absolutely necessary to be decided, in order to hold that the notices were insufficient?

3. That the indorser having left his residence and gone within the Confederate lines in his adherence to the Confederacy, and the United States having recognized the Confederate States as belligerents, that all of the incidents and consequences of a war, in the legal sense applying to the war thus recognized, the indorser's absence from his

residence was not voluntary, but obligatory, and therefore the notices left at such residence were insufficient.

Was this not making the insufficiency of the notice depend upon the decision of a Federal question?

But as these points are all discussed in the former brief, it is unnecessary to consider them here.

Having thus referred in general terms to the argument of the learned counsel for the defendants in error, in support of their motion to dismiss the case for want of jurisdiction, I propose to systematize what has been rather disconnectedly submitted.

The points made by the counsel for the defendants in error are—

1. That the plantiff in error did not expressly raise a Federal question in the pleadings or instructions.

2. That the defendants in error did not raise a Federal question in the pleadings or instructions.

3. That if the defendants in error did raise a Federal question, it was decided in their favor, and they do not invoke the jurisdiction of this court and the plaintiff in error cannot.

4. That the opinion of the State court cannot be looked to for the purpose of ascertaining that a Federal question was decided.

5. That if the opinion is looked to, it shows that the State Court did not decide a Federal question, but only applied the rules of the "general law" to the facts of the case.

It is not deemed necessary to add anything to what has already been submitted upon the first and second points.

As to the third point. Mr. Robinson, in his brief, page 7, argues that if it be true that the McVeighs did raise a Federal question by the instructions moved by them—that as such Federal question was decided in their favor, that the Bank has no right to claim the jurisdiction of this court, because the Bank did not raise a Federal question.

And he illustrates his argument by reference to the case of Matthews *vs.* McStea.

Surely the learned counsel does not intend to be understood as holding that if the Court of Appeals of New York had decided the Federal question which Matthews raised in his favor, that McStea could not have appealed to this court, and yet his argument is liable to this construction—for he says: "If it be argued, that like the defence of Matthews, there was that of McVeigh here, the plain answer is, that whatever might be thought, if the decision of the court below had been against McVeigh, and the writ of error brought by him, there can be no writ of error by the Bank of the Old Dominion, which did not set up any such ground, but on the contrary, claimed against the defense."

This would be indeed partial justice. To hold, that when this court is called upon to review the judgment of a State court construing a Federal Act, that its jurisdiction depends upon the way in which the State-Court ruled, whether for plaintiff or defendant, would be to make the right which the "Constitution and the laws of the Union guarantee to *every litigant* to have such question decided by the highest Federal tribunal" dependent upon accident or caprice—protecting him who claims that the Federal Act properly construed gives the right, while leaving him who denies that such is the true construction of that Act, without remedy, subject to the final and exclusive control of the State tribunals!

The statement of such a proposition is its own refutation. In fact, in a case like this, the rights and obligations of both parties depend upon the legal effect of the act construed. The Bank claimed that the existence of the war, as recognized by the Proclamations of April, 1861, did not prohibit or relieve it from giving the indorser notice of the dishonor and protest of the notes on the day of dishonor and protest. The indorser claimed that the existence of the war did both prohibit and relieve the Bank from giving the

notices at that time, and impose upon the Bank the duty of giving notices after the close of the war. How is it possible that the jurisdiction of this court can depend upon the fact whether the plaintiff or defendant raised this question, or how the State-court decided it?

This seems to be the ground upon which the learned counsel relies, as distinguishing this case from that of Matthews and McStea. If, as it seems to us—there is nothing in this argument—then the case of Matthews and McStea is almost identical with this case.

In that case Matthews set up the defence, "that at the time of the acceptances war had been declared and existed between that part of the United States in which he resided, and that in which his other partners resided, by virtue of which the partnership was dissolved, before the acceptances were made—and that the contracts as to him, were therefore void."

Compare this language with that of the instructions moved by McVeigh, on page 22 of the record, and it will be found substantially the same.

But further, at page 647, of 20 Wallace, we find that the opinion of the Court of Appeals of New York was referred to as discussing the question "at what stage of the civil war the rule against commercial intercourse with the enemy took effect, so as to dissolve the contact of co-partnership."

Are not the cases almost identical?

In that case Matthews claimed that the existence of the war on the 23d day of April, 1861, dissolved the co-partnership.

In this case, McVeigh claimed that because of the ex-existence of the war, at the time the notes sued on were protested, and the notices left at his residence in Alexandria—the contract of indorsement was suspended, and giving such notices was unlawful.

The opinions of the State courts in both cases show that the judgments of the courts were based upon the construction of the Acts of the President—the New York court holding that the Acts did not prohibit commercial intercourse, and the Virginia court holding that they did. Surely if this was a Federal question in Matthews *vs.* McStea, it must be a Federal question in the Bank of the Old Dominion *vs.* McVeigh.

Yet these cases are not identical. In the case from New York, Matthews did not leave his residence on one side of the hostile lines, and go over to the enemy. The hostile lines came between him and his copartners. In this respect his position was made better than that of McVeigh.

The 4th point to wit—that the opinion of the State court cannot be looked to, has been already fully discussed.

The 5th point to wit—that the opinion of the State court shows that the judgment was based upon the consideration of mere "general law" will be briefly considered.

The learned counsel for the defendants in error, rely upon the decision of this court in the case of Insurance Co. *vs.* Hendren 92, U. S. 286, as ruling this case, in deciding that the pleadings as well the instructions, present questions of "general law" alone The most casual examination of that case will show that it is in no respect whatever like this case.

In the brief formerly filed on behalf of the plaintiff in error, it is argued that the "general public law" did not apply in any case until after the 16th day of August, 1861—and after that time applied only to contracts between parties—who were separated by the hostile lines coming between them, and did not apply to a party who left his domicile within the Federal lines, and went voluntarily within the Confederate lines.

Now in the case of Insurance Co. *vs.* Hendren, the general public law was the only law applicable. The domicile of

the Insurance Company was in New York. Hendren's was in Virginia. The hostile lines came between them. The premium was not due and payable until the 25th day of August, 1861. At that date the Proclamation of August 16th, 1861, had been made, by which the "general public law" was made applicable to the contract of insurance, and prohibited the payment of the premium, which fell due on the 25th day of August, 1861. The Federal Acts of April, 1861, could not have any application to that case, and for this reason were not relied on by the parties, nor considered by the court.

In that case the court was not bound to take judicial notice of the Proclamations of April, 1861, as affecting the lawfulness of commercial intercourse between the hostile sections, because their effect in this particular had been susperseded by the Proclamation of August 16, 1861. In this case the notices were given prior to the 16th day of August—and when the Proclamations of April, 1861, were the law of the case.

There is another question in this case which the State-court held to be a question of general public law, but which this court has decided to be a Federal question—the question as to the effect of McVeigh leaving his home in Alexandria within the Federal lines and going within the Confederate lines in adherence to the rebellion—as affecting the sufficiency of the notices left at his residence within the Federal lines during his said absence.

In the case of Ludlow *vs.* Ramsay, the counsel for Ramsay argued that the question of the effect of Ramsay's absence from his home, upon the validity of the notice of attachment, was a question of "general public law."

I quote from the argument. "This court has recognized the war of the rebellion to have been a public war, and the fact that Ramsay, before the Federal army took possession of the country around Knoxville, had resided there, and voluntarily left it and gone to another State, although it

might have some weight in determining his status in a proceeding by the Government against him, cannot avail Ludlow in a suit of this kind." "Whatever may have been his sympathies with the rebellion, *he has a legal right to allege the fact of the existence, at the time of a public war, and that being within the lines of the Rebel authorities, he had no possible opportunity to defend the suit against him, nor to obtain any information of the existence of such a proceeding.*"

Here was a claim that the general public law applied to this case. But this court held that it did not—that it was a question of Federal law.

Now, the Supreme Court of Appeals of Virginia, in its opinion amplified the agument of Ramsay's counsel, approved and adopted it. (See pages 37 and 38 of the Record.

There are other questions as to the effect of the late civil strife upon the rights and obligations of the parties to the contract in this case, which were by the State-Court adjudged to be questions of "general law"—but which this court has decided to be Feberal questions—but it is unnecssary to refer to them again.

Whatever doubts may have heretofore existed respecting the law applicable to the late civil strife—the legal status of the Confederacy and its adherents has been clearly defined and authoritatively settled by the decision of this court in the case of Williams *vs.* Bruffy 96 U. S. R. 176.

It is impossible to select extracts from the opinion of the court, in that case. Every paragraph from the top of the 186th page to the end is a refutation of the views advanced and relied on by the Supreme Court of Appeals of Virginia, and a repudiation of the claim that all the rights and incidents of a war "inter gentes" applied to the late civil war

And it was time that these questions should be settled, and settled forever.

The tendency of the State courts, to fight the late war over again whenever litigation arose between parties

who were on different sides of the hostile lines, kept up an unhealthy excitement in the body politic, and the practice of making the adjudication of the simplest questions of mere municipal law, the occasion for learned disquisitions upon States' rights, and the legal status of the confederacy and its adherents, was misleading public sentiment, and sowing the seeds of a large harvest of future troubles.

Mr. Robinson in his brief refers to the fact that the counsel for the plaintiff in error, in the petition to the State-Court for a supersedeas, expressed the opinion that it was scarcely necessary for the court to consider the Federal questions raised in the record.

It was hoped that the State court, upon the new facts presented by the record, would be able to render judgment *in favor of the plaintiff in error*, without considering the Federal questions; but the court held that this supposition was too sanguine, and found for the defendants in error, upon the questions not Federal at the second hearing—having before decided the Federal questions adversely to the plaintiff in error. The State-court did at the second hearing, however, decide adversely to the plaintiff in error, upon the Federal questions involved in the instructions, refused by this corporation court, by affirming such refusal.

FINALLY.

The question as to the jurisdiction of this court, has been much more elaborately argued than was necessary.

It is conceded by the learned counsel for the defendants in error, that if the pleadings or instructions had expressly raised the question as to whether or not the proclamations of the President issued on April, 1861, made intercourse by land between the hostile sections unlawful, and the State court had held that they did, and that because such was the effect of them the notices were insufficient, that in that case this court would have jurisdiction.

But they argue that neither the pleadings nor instructions did expressly raise that question.

We say that this and other Federal questions were raised by the instructions.

But let it be conceded that no Federal question was in that form expressly raised—this fact remains neither questioned nor doubted, towit—that the State court *decided* that the Proclamations of April, 1861, did make it unlawful for the Bank to give the indorser notice of dishonor and protest at the time notices were left at his residence in Alexandria, and that *for this reason and for this reason alone, the notices were insufficient.* The Federal question was *decided*, and decided adversely to the plaintiff in error, and this decision of it—even if it had not been *presented*, gives this court jurisdiction, for this court has said: "*The true test is not whether the record exhibits an express statement that a Federal question was* PRESENTED, but whether such question was DECIDED, and decided adversely to the Federal right."

The State court held that the plaintiff in error claimed the Federal right to discharge its part of the contract of indorsement by leaving notices of dishonor and protest at the indorser's residence in Alexandria. The State court, in passing upon the effect of the war as recognized by the Proclamations of April, 1861, decided adversely to this claim of the plaintiff in error. Need anything more be said?

If the court should hold the writ defective, leave is prayed to amend it.

H. O. CLAUGHTON,
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